1310.

SUPREME COURT OF THE UNITED STATES.

No. 102.

THE NORTHERN INDIANA RAILROAD COMPANY AND THE BOARD OF COMMISSIONERS FOR THE WESTERN DIVISION OF THE BUFFALO AND MISSISSIPPI RAILROAD, COMPLAINANTS AND APPELLANTS,

vs.

THE MICHIGAN CENTRAL RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF MICHIGAN.

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Gideon, printer.

Pleas at the city of Detroit, in the district of Michigan, before the judges of the circuit court of the United States, for the seventh circuit and district of Michigan, sitting in equity, of the term of June, in the year of our Lord one thousand eight hundred and fifty-two.

In the case between—

THE NORTHERN INDIANA RAILROAD COMPANY, and the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad, complainants,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY, defendants.

DISTRICT OF MICHIGAN, *ss.*

Be it remembered that, on the second day of June, in the year of our Lord one thousand eight hundred and fifty-two, came the said Northern Indiana Railroad Company, and the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad, by John B. Niles, their solicitor, into the circuit court of the United States, for the seventh circuit and district of Michigan, before the judges thereof, according to the rules and practice of said court, and then and there filed their bill of complaint against the said Michigan Central Railroad Company, which said bill of complaint is in the words and figures following, that is to say:

To the honorable the judges of the circuit court of the United States of America, for the seventh circuit, within and for the district of Michigan, sitting in equity.

Humbly complaining, show unto your honors, your orators, the Northern Indiana Railroad Company, a corporation created by and doing business in the State of Indiana, and the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad, a corporation created by and doing business in the State of Indiana, that an act of the legislature of the State of Indiana was passed February 6, 1835, entitled "An act to incorporate the Buffalo and Mississippi Railroad Company," whereof a copy is hereto annexed, marked schedule A, which your orators pray may be taken as a part of this bill of complaint. That the corporation by said act created and authorized was duly constituted and organized, pursuant to the provisions of the said act, and the franchises therein declared and conferred were duly accepted and used by such corporation. That by a subsequent act of the legislature of the State of Indiana, passed February 6th, 1837, the name of the said corporation, so organized as aforesaid, was

changed to the name and style of the Northern Indiana Railroad Company; which last mentioned act was duly accepted and adopted by the same corporation on the seventh day of June, 1851, and a copy thereof is hereto annexed, marked schedule B, which your orators pray may be taken as a part of this bill of complaint. That several acts of the legislature of the State of Indiana were passed, confirming, amending, and enlarging the charter and franchises of the same corporation, of which copies are hereto annexed as schedules, which your orators pray may be taken as a part of this bill of complaint, at the times following, namely: Schedule C, February 7, 1838; schedule D, January 21, 1839; schedule E, January 28, 1843; schedule F, January 13, 1845; schedule G, January 6, 1846; schedule H, January 20, 1846; and schedule I, February 7, 1848. That an act of the legislature of the State of Indiana was passed February 8, 1848, of which a copy is hereto annexed, marked schedule J, which your orators pray may be taken as a part of this bill of complaint; in and by which last mentioned act your orators, the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad, became and were constituted a body politic and corporate. And that a further act of the legislature of the State of Indiana was passed January 5, 1849, of which a copy is hereto annexed, marked schedule K, which your orators pray may be taken as a part of this bill of complaint, in and by which the powers and franchises of said last mentioned corporation were confirmed and enlarged, as therein more fully appears. And that an act of the legislature of the State of Indiana was passed February 5, 1852, of which a copy is hereto annexed, marked schedule K 2, which your orators pray may be taken as a part of this bill of complaint, which said act has been adopted by your orators, and acted under by them respectively. And that each and every the aforesaid acts of the legislature has been duly accepted and adopted by the corporations therein mentioned respectively, your orators in this bill of complaint, and all due and proper proceedings and resolutions for that purpose were had, passed, and entered as by law required; and that the said several acts of the legislature still remain unrepealed and in full force and effect, except so far as the same have operated to work a change, amendment, or repeal of any provisions thereof; and that by virtue of said acts your orators are severally corporations created by the State of Indiana, and by virtue of the same they severally are entitled to do, and in fact do, and perform business in the State of Indiana, as authorized by their said charters, and are, in meaning and contemplation of the Constitution and laws of the United States, citizens of the State of Indiana, and entitled to be deemed and taken as such citizens for all the purposes of suing and being sued, and for the purposes of this bill of complaint.

Your orators further show unto your honors that your orators, the said Northern Indiana Railroad Company, after the passage of the said act of February 6, 1835, and after their due organization as aforesaid, examined, surveyed, marked, and located the route of their railroad, and, by the means specified in the aforesaid acts, procured the

right of way for said railroad as the same has been constructed, and became seized in fee of the right to the lands acquired for that purpose, with all the privileges and franchises in relation thereto confirmed and declared by the said acts; and that the route of that part of the western division of said railroad lying between Michigan City, in the county of Laporte, and the western line of the State of Indiana, was duly surveyed and located, and a map of the location thereof duly filed in the office of the secretary of State of Indiana, and the right of way therefor duly acquired by your orators; and that from thence hitherto your orators have been, and still are, entitled to have the sole and exclusive occupancy of the lands acquired for that purpose as aforesaid; and that by reason of the premises and the acts aforesaid no person, body politic or corporate, lawfully may interfere with the said lands, or molest, disturb, or injure any of the rights and privileges by the said acts granted, or do any act or thing that would be calculated to detract from or affect the profits of the corporations by said acts created; and that a part of the lands included in said location consists of a strip of ground eighty feet in width, extending from Michigan city to the west line of the State of Indiana, by and along the route so located for your orators' said railroad, as the same is laid down on the map hereto annexed, marked schedule L. And that the railroad of your orators has been constructed and completed upon the whole of said route, from Elkhart to Laporte, and from Michigan City to the west line of the State of Indiana, and is in the actual use of your orators in the transportation of persons and property.

Your orators further show unto your honors, that they have purchased, and now own in fee simple, certain other lands situated on or near the line of said railroad, so located as aforesaid, and deemed useful and necessary for the business and purposes of *of* said railroad, and for the construction and completion thereof, the same not being over eighty acres in extent in any one tract; and one tract thereof consisting of a piece one hundred feet wide, lying across the northwest quarter of the southeast quarter of section number thirty-five (35), in township number thirty-seven (37) north, of range number six (6) west, where a line for a railroad was surveyed by J. H. Sargent, together with all parts of said southeast quarter lying north of the piece so described.

Your orators further show unto your honors, that the said plaintiffs did commence and have prosecuted their railroad within the time required by the said several acts, and have proceeded therewith thence hitherto with all reasonable and practicable diligence; and the same now is completed, with the exception of a part of the distance, about fifteen miles in length, west of Laporte, which is in progress, but not yet completed, from Elkhart, in the State of Indiana, to the west line of said State; and that the said road was completed and in actual occupation and use by your orators for the transportation of passengers and freight for a distance equal to more than one-half the distance across the entire northern part of the State of Indiana, in the month of January last; and that the part so completed and in use included the whole

distance from Michigan City to the west line of said State of Indiana. And your orators claim and insist, that as to the portion of their road now completed, they are entitled to the full benefit and advantage of the exclusive rights and privileges granted and secured by the several acts aforesaid, and especially by the 20th and 21st sections of said act of 1835; by the 7th section of the said act of January 6, 1846; and the 5th section of the said act of February 8th, 1848.

And your orators claim and insist, that by reason of the said last mentioned acts, all the rights and privileges granted to said plaintiffs and their charters, attached to and become the rights, privileges, and charter of the portion of said road thus completed; and that among the rights and privileges thus possessed by your orators is the sole and exclusive right and privilege of building, maintaining, and using a railroad along the general route of the road of your orators.

And your orators claim and insist, that by reason of the said acts no charter can be lawfully granted to any other company to construct any other road or roads in the vicinity of the said railroad of your orators, which would materially diminish or interfere injuriously with the profits of the said road of your orators, without the consent of your orators, which consent has never been given. And your orators claim and insist, that they have, by means of the premises, acquired, and do now possess, and are entitled to the sole and exclusive right, to construct, maintain, and use a railroad through and across the State of Indiana, from the eastern end of their railroad in the State of Indiana, to the western line of the State of Indiana, in a direction towards Chicago; and that the legislature of the State of Indiana did not reserve to itself, and since the passage of the acts aforesaid, has not possessed, and does not now have or possess, the constitutional power or authority to confer upon any other corporation or person the right to build, or maintain, or use any railroad under any other charter, which should run in the same general direction with the railroad of your orators; and so near the same as to materially diminish, or interfere injuriously with, the profits of the said road of your orators, without your orators' consent, and that such consent has never been given; and that by virtue of the said several acts of the legislature of the State of Indiana, and the acceptance thereof by your orators respectively, and the use of the franchises thereby granted, and the labor and expense incurred and bestowed by your orators respectively upon the surveying, laying out, constructing, and using the said railroad pursuant to the said acts, your orators have become, and are, fully entitled to the exclusive rights and privileges aforesaid, as by the indefeasible grant and contract of the said State of Indiana.

Your orators further show, that the said western division of the Buffalo and Mississippi railroad has been constructed by your orators, and at their expense, and that the same is now owned and held by them solely; and that your orators, the plaintiffs in this bill of complaint, together hold and represent all estates, rights, titles, and interest whatsoever, of, in, and to, the said western division of the said railroad; their interest being either joint or several, as is provided by the several acts

aforesaid, and the proceedings and agreements of your orators under the said acts.

Your orators further show unto your honors, that the defendants, the Michigan Central Railroad Company, are a corporation, created by, and doing business in, the State of Michigan; and said corporation is a citizen of the State of Michigan within the meaning of the Constitution and laws of the United States, and entitled to be deemed and taken as such citizen for all purposes of suing and being sued, and for the purposes of this bill of complaint; that said defendants were incorporated by an act of the legislature of the State of Michigan, for the purpose of constructing and using a railroad from Detroit, in the State of Michigan, to some point in the same State upon Lake Michigan accessible to steamboats navigating said lake, and with authority to extend their railroad to the southern boundary of the State of Michigan; that said last mentioned company have constructed, and now keep in use, a railroad from Detroit to New Buffalo, in the State of Michigan, and on Lake Michigan, and thence to the southern line of the State of Michigan, in the direction towards Michigan City, in the State of Indiana; and that, by an arrangement with the commissioners of the western division of the Buffalo and Mississippi Railroad Company, the Michigan Central Railroad Company have extended, and do now use, their railroad to said Michigan City.

Your orators further show unto your honors, that the New Albany and Salem Railroad Company is a corporation, created by, and under, certain acts of the legislature of the State of Indiana, and doing business therein, and that it has no power or franchise to construct, or to authorize the construction of any railroad whatsoever, except what is contained in the statutes, of which copies are hereunto annexed, and which your orators pray may be taken as a part of this bill of complaint, the same having been passed at the different times following, namely: Schedule M, supposed to have been passed in 1846; schedule N, February 11, 1848; schedule O, January 12, 1849; schedule P, January 12, 1850; schedule Q, January 8, 1851.

Your orators further show unto your honors, that the New Albany and Salem Railroad Company, and the defendants, the said Michigan Central Railroad Company, on or about the 24th day of April, 1851, entered into a contract with each other, of which a copy is hereunto annexed, marked schedule R, unto which your orators pray leave to refer; and your orators charge that said original contract, and other writings, showing the nature and extent of the arrangement between the Michigan Central Railroad Company and the New Albany and Salem Railroad Company, are now in the possession, or under the control, of the said Michigan Central Railroad Company; and your orators here seek from them a discovery thereof, and pray that the same may be produced, and unto which, when so produced, your orators pray leave to refer; and under and by virtue, or by color of the same contract, or some other like or similar, or substantially similar arrangement, the said Michigan Central Railroad Company have claimed thence hitherto, and still claim the right and power to construct and use a railroad from Michigan City to the western line of the State of Indiana

by a route nearly parallel with the said located and constructed railroad of your orators, and in its immediate vicinity, and several times crossing the same; and also the right and power to locate, construct, and use such railroad of said Michigan Central Railroad Company, over and across your orators said railroad, with the exclusive franchises and privileges aforesaid, as they, the said Michigan Central Railroad Company, shall see fit. And your orators further show, that the said Michigan Central Railroad Company, in pursuance of such unlawful and fraudulent arrangement, have commenced constructing a railroad from Michigan City to the west line of the State of Indiana, running throughout said distance very near to your orators' said located railroad, and have so laid out the route of said railroad of the said Michigan Central Railroad Company as to cross the said railroad of your orators, upon lands the title to which was acquired by, and is now held by, your orators as aforesaid, and upon which your orators have constructed their said railroad, in two several places, in and between Michigan City and the west line of the State of Indiana, with the purpose and intent of obstructing and unlawfully interfering with the possession, occupancy, and use of your orators of such lands, and with the intent to hinder and molest your orators in the enjoyment and use of the rights and franchises granted to your orators by the acts aforesaid, and to defeat your orators' exclusive right to have and use a railroad within that vicinity.

Your orators further show unto your honors, that, in pursuance of the unlawful and fraudulent arrangement, and in execution of the unlawful intents last aforesaid, the defendants have entered into the said lands of your orators, upon which your orators' said railroad was located, and then partially constructed as aforesaid, and have made excavations and embankments, and laid rails thereon, and prepared a railroad across the same ready for use, which, if continued, would obstruct and hinder the use of your orators' said railroad upon and across the same lands; that the said Michigan Central Railroad Company have also, in like manner, entered into the said other lands of your orators in said section thirty-five, in township thirty-seven, and, throughout the greater part thereof, have built and made ready for use their said railroad, and in such manner as to hinder your orators from using said lands, according to the rights therein vested in your orators as aforesaid.

Your orators further show unto your honors, that they are advised, and believe, that no act of the legislature of the State of Indiana has ever been passed, giving to any person, company or corporation, a right to enter, or construct, or use a railroad upon, or over, any part of the lands of your orators, so acquired and held as aforesaid; and also that there is no law or statute of the State of Indiana providing for the assessment or payment of your orators' damages, which they would sustain if any part of said lands were taken from your orators for the use of any other railroad company; and that no person, company, or corporation has paid, or offered to your orators, any compensation, or consideration, for the taking of such lands, or any of them; and that there

is no law or statute of the State of Indiana, whereby the said Michigan Central Railroad Company can lawfully, either under said contract with the said New Albany and Salem Railroad Company, or in any other manner, construct or maintain any railroad from Michigan City west towards the State line of Indiana, or over any part of that space; and your orators are advised, and believe, that there is no law of the State of Michigan authorizing the said defendants to make such contract with the New Albany and Salem Railroad Company, in manner and form aforesaid, or to locate said road, or any part of it, or to make any expenditure upon it, by virtue of such contract. That said defendants claim to have derived their authority for making such contract, and the expenditures under the same, from an act of the legislature of the State of Michigan, passed April 3d, 1848, of which a *a* copy is hereto annexed, marked schedule S, and which your orators pray may be taken as a part of this bill of complaint; but your orators submit and insist that the said act did not confer, and that said defendants do not possess, the legal right to make such contract, or the road, or the expenditures therein provided for. And they further charge, that the said New Albany and Salem Railroad Company had no lawful authority to make any such or similar contract with the said defendants.

Your orators further show unto your honors, that the lands of your orators, so as aforesaid crossed by the railroad of the defendants, had been acquired and appropriated by your orators as aforesaid, and a part of the same graded, and the track laid thereon previous to the defendants' entry and occupation thereof, and to all claims and pretences of the location of the defendants' railroad across or upon the same.

Your orators further show unto your honors, that the defendants' said railroad is laid out and located, and, so far as the same is constructed, the same is situated in the vicinity of said western division of your orators' railroad; that the defendants' said railroad runs in the same general direction throughout said western division, being a distance of about forty miles, and, upon an average, within one or two miles of your orators' railroad, throughout said distance; that the defendants' said railroad, if allowed to be used, will materially diminish and interfere injuriously with the profits of your orators' said railroad, and that your orators have never consented to the construction of the defendants' said railroad; and your orators' claim and insist, that the defendants' said railroad is a violation of the rights of your orators, as secured to them by the several acts aforesaid, and that the defendants have no right by virtue of any statute, or other law of the State of Indiana, to construct or use their said railroad in the State of Indiana; and that the building and the using thereof by the defendants cannot be made lawful as against your orators, by any bill or act of the legislature whatsoever, and that your orators, by means of the premises, have, and possess, and are entitled to the sole and exclusive rights above in that behalf stated, and the same cannot be impaired by any statute or act of the legislature of the State of Indiana, but any and every provision of any such statute or act adverse to, or inconsistent with, your orators' said exclusive rights, are repugnant to the Constitution of the United States, and void.

And your orators further show unto your honors, that before the commencement, by the defendants, of their said railroad from Michigan City to the west line of the State of Indiana, and as soon as your orators received information of the defendants' intention so to do, your orator notified the defendants of your orators' rights in the premises, and gave the defendants notice that your orators would resist and oppose the defendants if they proceeded to construct or use such railroad upon or near the line where the same is located. That your orators both orally, and by writing, informed the defendants of your orators' said exclusive rights at several times, and also gave the defendants full notice that your orators would not suffer or permit the defendants to lay out, locate, construct, or use any railroad upon or across your orators' land over which your orators' said railroad is located; nor to construct any railroad in the vicinity of your orators' said railroad, running in the same general direction; nor to construct any railroad upon or near the route over which the defendants' said railroad is located; and that your orators would resist and oppose the same as an infringement upon your orators' rights aforesaid. And your orators further show, that from thence hitherto your orators have continued to remonstrate against the unlawful doings of the defendants above alleged; and that all the expenditures of money and labor by the defendants, made in and about their said railroad, have been made in their own wrong, and with full notice of the rights of your orators, and your orators' intention to resist and oppose the said encroachment thereon.

Your orators further show, that the said New Albany and Salem Railroad Company are not constructing, nor have they constructed, any continuous railroad from New Albany northward, except for about 53 miles; and that from the northern termination thereof a distance of over 200 miles intervenes between said constructed railroad and the nearest point of the railroad so building and built as aforesaid by the Michigan Central Railroad Company, under color of the charter of said New Albany and Salem Railroad Company. That your orators have never renounced, forfeited, or lost the right to construct a branch railroad from Michigan City, or from Goshen, South Bend, or Laporte to Lafayette, nor the privileges and franchises granted to your orators in respect thereof; and that it is impossible for any other party to construct a railroad from Michigan City to Salem without locating it very near your orators' said branch railroad, and greatly injuring the profits thereof. And your orators further show, that another company was incorporated by the legislature of the State of Indiana, by the act of January 19, 1846, called the Crawfordsville and Wabash Railroad Company, for the purpose of constructing a railroad from Crawfordsville to Lafayette; and such road has been located, and for the most part built, and will soon be in operation, and that the same renders the construction of a continuous line of railroad, by the New Albany and Salem Railroad Company from New Albany to Michigan City, useless and unprofitable; and that while the said New Albany and Salem Railroad Company pretend that they will build a railroad from Lafayette to Michigan City, they do not intend to build a railroad between said

towns of Crawfordsville and Lafayette, or to make said road continuous from New Albany to Michigan City.

Your orators further show unto your honors, that the said Michigan Central Railroad Company, by their attorneys and agents, have often, and as late as the session of the legislature of Indiana, held immediately preceding the date of the aforesaid contract between said defendants and said New Albany and Salem Railroad Company, made great endeavors to obtain from the legislature of the State of Indiana a law allowing them to extend their railroad westward through the State of Indiana to the west line thereof; but the same has never been granted to them; and that said Michigan Central Railroad Company, knowing that your orators were about to perfect a communication by railroad around the head of Lake Michigan to Chicago, and for the purpose of hindering and preventing the completion thereof, and delaying and injuring your orators, have taken the unlawful and unjust measures aforesaid.

Your orators further show unto your honors, that the construction and using of a railroad through the State of Indiana, from Michigan City to the western line of the State, so as aforesaid being constructed by the Michigan Central Railroad Company, would not only interfere with the lands, rights of way, and exclusive franchises of your orators, but would seriously reduce and affect the value of your orators' property in the said railroad, and interfere injuriously with your orators' profits in running the same; and would diminish your orators' annual nett revenues from their said road by many thousands of dollars.

Your orators further show, that the said Michigan Central Railroad Company intend to, and do publicly announce that they will, finish and put into operation their said railroad, from Michigan City to the west line of the State of Indiana, within the next sixty days, and that thereafter they will operate the same in competition with the road, and as your orators allege, in derogation of the rights of your orators; and the said Michigan Central Railroad Company, by means of the premises, have already caused your orators to suffer great loss and damages, amounting to many thousands of dollars; and that if your orators shall forcibly expel the said Michigan Central Railroad Company, and their servants and agents, from the said lands of your orators, they intend and threaten to intrude again; and therefore your orators are advised that an injunction, to restrain them from such acts, is necessary to the preservation of your orators' rights in the premises, and the prevention of remediless injury.

Your orators further show, that for the purpose of avoiding controversy they have at all times been ready and willing, and have offered to the Michigan Central Railroad Company, to carry the freight and passengers of said company in the cars and over the railroad of your orators, between Michigan City and the western line of the State of Indiana, at as low rates as your orators would carry the same if transported over the whole length of your orators' railroad; or to carry the same in the cars of said defendants, at the same prices, and make a liberal allowance for the use of said cars; and that your orators' rail-

road, from Michigan City to the west line of the State of Indiana, will for a long time be capable of doing all the business of your orators and of said company between those points, and the construction of a second railroad there would be a needless waste of materials and labor; but said company has rejected all such propositions of your orators.

Your orators further show, that unless the said Michigan Central Railroad Company shall be restrained by an injunction from interfering with and disturbing your orators in the exercise of their rights in the premises, great and irreparable injury will happen to your orators, which cannot be redressed by the course of the common law.

And your orators further show that the said New Albany and Salem Railroad Company are not made defendants herein for the reason that they cannot be joined without ousting the jurisdiction of the court as to the Michigan Central Railroad Company; and also for the reason that complete and perfect equity may [be] done and decreed between the parties hereto without the joinder of said New Albany and Salem Railroad Company; and also for the reason that they have no present or direct interest involved in this suit, and are not necessary parties to a decree granting to your orators the relief herein prayed.

And your orators submit to your honors that an injunction to restrain the said Michigan Central Railroad Company, and their agents and servants, from entering upon or using the said lands of your orators, and from grading or excavating upon the same, and from laying down rails thereon, and from obstructing or hindering your orators and their workmen and servants from completing your orators' railroad thereon, and using the same exclusively, and from doing any act or thing inconsistent with your orators' full and exclusive rights to said lands, and to the railroad located thereon, and from constructing or using the railroad which the defendants have laid out, or any other railroad whatsoever upon or near the line and route where the same is located, and from doing any act or thing in violation of your orators' said exclusive rights, should be awarded to your orators by this honorable court in consideration of the premises, and such injunction is here sought by your orators.

All which actings and doings of the said Michigan Central Railroad Company are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises.

In consideration whereof, and forasmuch as your orators are remediless at and by the strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this sort are properly cognizable and relievable:

To the end therefore, *therefore*, that the said Michigan Central [Rail]road Company, the defendants in this bill of complaint, may, if they can, show why your orators should not have the relief hereby prayed, and may, according to the best and utmost of their knowledge, remembrance, information, and belief, full, direct, and perfect answer make, to such of the several interrogatories hereinafter mentioned and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether it is not a fact that the defendants made and entered into the contract with the New Albany and Salem Railroad Company herein above mentioned.

2. Whether it is not a fact, that by color of such contract, or some modification thereof, the defendants proceeded to, and did, locate a railroad from Michigan city to the west line of the State of Indiana, nearly parallel to, and at a short distance from, the located and constructed railroad of your orators, and in several places crossing the same.

3. Whether it is not a fact that the defendants have entered into the lands of your orators, upon which your orators' said railroad was located, and also upon their lands in section thirty-five aforesaid, and made excavations and embankments thereon, and laid down a railroad thereon, and disturbed and hindered your orators from constructing their railroad upon the same pursuant to the location thereof.

4. Whether it is not a fact that the plaintiffs gave due and full notice to the defendants, as in this bill above alleged, of your orators' exclusive rights aforesaid, and your orators' intentions to resist and oppose the construction and the use of the defendants' said railroad, and all infringements whatsoever by the defendants upon your orators' said rights.

5. Whether it is not a fact that the defendants have constructed their said railroad with notice of your orators' said rights and intentions.

6. Whether it is not a fact that the defendants' said railroad is constructed in the vicinity of the railroad of your orators, and running in the same general direction, and is such as materially to diminish or interfere with the profits of your orators' said railroad.

And that the defendants may answer the premises, and that the defendants, and all and singular their officers, servants, agents, engineers, and workmen may be restrained by the injunction of this honorable court from entering upon or using the said lands of your orators, and from grading or excavating upon the same, and from laying down rails thereon, and from obstructing or hindering your orators, or their workmen or servants, from completing your orators' railroad thereon, and using the same exclusively, and from in any manner intermeddling or interfering with your orators' said lands, and their use and occupation thereof, and from locating, constructing, or using a railroad from Michigan City to the western line of the State of Indiana, or upon any part or parts intermediate, and from in any way interfering or intermeddling with, or infringing upon, your orators' exclusive rights and privileges aforesaid. And in case the said defendants shall put in operation a railroad from Michigan City to the west line of the State of Indiana, or for any part of that distance, and transport passengers or freight thereon before a final decree shall be made in this cause: Your orators pray that the said defendants may, by the decree of this honorable court, be compelled to render a full and accurate account of all the business which may be done on said road, or any part thereof, and may be decreed and compelled to pay

over to your orators all such moneys as they may receive for the use of said road or the transportation of passengers or freight thereon; and that your orators may be fully indemnified against all such loss or damage as they have already sustained, or may hereafter sustain, by the acts and proceedings of the said defendants in the premises.

And that your orators may have such other and further relief as to this honorable court shall seem meet:

May it please your honors to grant unto your orators not only a writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the defendants and their officers, servants, agents, engineers, and workmen, to restrain them as herein above described, but also a writ or writs of subpœna to be directed to the defendants, commanding them, on a certain day and under a certain pain therein to be limited, personally to be and appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises; and further, to stand to and perform and abide such further order, direction, and decree therein as to your honors shall seem meet.

And your orators shall ever pray, &c.

The defendants are required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6.

Signed, the Northern Indiana Railroad Company,

[L. S.] By GEO. BLISS, *President.*

Signed, the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad,

[L. S.] By W. C. HANNAH, *President.*

(Signed) JNO. B. NILES,
Solicitor for complainants.

(Signed) GREENE C. BRENSON,
Of counsel for complainants.

DISTRICT OF ILLINOIS, *ss.*

George Bliss being duly sworn deposes and says, that he has read the foregoing bill of complaint, and knows the contents thereof, and that deponent is president of the Northern Indiana Railroad Company, and that deponent as such president thereof signed the said bill in the name of the said company and by its authority; and that the said bill of complaint and the matters therein alleged are true of this deponent's own knowledge, excepting only such matters as are therein stated upon information and belief, and as to those matters he believes the same to be true.

And further this deponent says not.

(Signed) GEO. BLISS.

Subscribed and sworn to before me this 7th day of April, 1852.

(Signed) J. W. CHICKERING,
Commissioner for taking affidavits, &c., within the district of Ill.

DISTRICT OF ILLINOIS, *ss.*

William C. Hannah being duly sworn deposes and says, that he has read the foregoing bill of complaint, and knows the contents thereof; and that deponent is a member of the board of commissioners for the western division of the Buffalo and Mississippi Railroad, and president of said board; and that deponent, as such member of the said board of commissioners and as such president, signed the said bill in the name of the said board and by its authority; and that the said bill of complaint and the matters therein alleged are true of this deponent's own knowledge, excepting only such matters as are therein stated upon information and belief, and as to those matters he believes the same to be true.

And further this deponent says not.

(Signed) W. C. HANNAH.

Subscribed and sworn to before me this 7th day of April, 1852.

(Signed) J. W. CHICKERING,

Comm'r for taking affidavits, &c., within and for the district of Ill.

SCHEDULE A.

An act to incorporate the Buffalo and Mississippi Railroad Company, (approved Feb. 6, 1835.)

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That Gustavus A. Everts, Aaron Staunton, and John B. Niles, of the county of Laporte; Lathrope M. Taylor, Samuel C. Sample, and Horatio Chapin, of the county of St. Joseph; William Latta, Thomas Thomas, James R. M'Cord, John Voilet, Aaron M. Perine, and John Rorrer, of the county of Elkhart; Ephraim Sealy, Luther Newton, Nehemiah Coldren, and Robert Latta, of Lagrange county, and their successors in office, duly elected as hereinafter directed, are hereby appointed a body politic and corporate, and, by the name and style of the "Buffalo and Mississippi Railroad Company," shall be able and capable, in law and equity, to sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any and all courts of justice whatever; to make and use a common seal, and the same to alter, change, or renew at pleasure; and shall be able and capable in law to make contracts and enforce the same; to make and enforce the necessary by-laws, rules, and regulations, to enable them to carry into effect the provisions of this act, and the objects contemplated by the same, not inconsistent with the laws and constitution of the State.

Incorporation.

Sec. 2. The capital stock of said corporation shall be five hundred thousand dollars, divided into shares of one hundred dollars each.

Capital.

Sec. 3. The directors named in this act, or a majority of them, may meet at such time and place as they may agree

Organizati'n

on, and organize said corporation by electing one of their body president, and after such organization any three of the board shall be a quorum; but after an election for directors it shall require five to form a quorum.

Powers. Sec. 4. The corporation shall have power to appoint agents, clerks, treasurers, surveyors, engineers, superintendents, artists, and all other officers and persons necessary to carry into effect the objects of this act. They shall keep a journal of their proceedings, in which shall be entered the by-laws, rules, and regulations, and all orders for the payment of such allowances as may be made to their officers, and all others in their employ; which journal shall, from time to time, be read by the board, and, if found correct, signed by the president. They may sit on their own adjournments, or on the call of the president; when the president is absent, they may appoint a president pro tempore. They shall fill all vacancies that may happen in their own body.

Subscript'ns Sec. 5. The corporation shall cause books to be opened for subscription to the capital stock, at such time, [and] at such place or places, as they may choose, due notice of which shall be given; in each of which books the following entry shall be made: "We, the undersigned, promise to pay the sum of one hundred dollars for each share of stock set opposite to our names, in such manner and proportions, and such time, as the president and directors of the Buffalo and Mississippi Railroad Company may direct. Witness our hands, this day of 183 ."

Same. Sec. 6. It shall be lawful for all persons of lawful age, for the agent of any corporate body, for any agent of any State or United States, on behalf of the same, to subscribe for any amount of capital stock, and the books shall be kept open for any such space of time, and at such place or places, as the corporation shall choose, and may be re-opened at any time; and they may, by an agent, offer for sale in any other State any amount of stock, upon such terms and conditions as *they* may be thought advisable. They shall have power, on their own credit, to borrow money on such terms as may be agreed on by the parties, and pledge the corporation and stock for the payment thereof. The said corporation may require such sum of money to be paid at the time of subscribing, not exceeding five dollars on each share, as they may think proper; but such requisition shall be made known by being inserted in the notice for opening the books, and any future payments on the stock shall be under the control of the corporation.

Choice of directors. Sec. 7. As soon as five hundred shares are subscribed for, and five dollars paid on each share, it shall be the duty of the coporation to give four weeks' notice in some newspaper printed in the vicinity of the contemplated route, and in such

notice to appoint a time and place for the stockholders to meet and elect seven directors, who shall be stockholders and citizens of the State: (Provided, however, that if Ohio and Illinois States, by an act of their legislatures, grant an extension of this charter through their respective States, or either of them, to the head of the Maumee bay and the rapids of the Illinois, the citizen stockholders of the State of Ohio and Illinois shall be entitled to the like privileges and immunities of the citizen stockholders of Indiana;) which election of directors shall be holden within two months after the last share of five hundred dollars shall have been subscribed for, and shall be conducted by two judges appointed by the stockholders present; and the persons having a plurality of the votes given and counted in public, shall be declared duly elected. No share shall confer a right to vote at any election, unless the same shall have been held one month previous to the election. In all elections one share shall entitle the holder to one vote, and the votes may be given by the persons owning the same; or by one of any partnership; or by the husband, father, mother, administrator, executor, trustee, or guardian; or by the authorized agent of any corporation, State, or United States; or any person having a right to vote may vote by proxy.

Proxies.

President. Sec. 8. It shall be the duty of the directors elected as above, and those elected at all subsequent elections, to meet as soon thereafter as they conveniently can, and elect one of their body to be president. The president and directors thus elected shall continue in office until the next annual election, and until their successors are elected and organized.

Annual election. Sec. 9. All elections after the first shall be held on the first Monday of October annually, under the direction of three stockholders, not directors at the time, to be appointed by the board at a previous meeting, or by the stockholders present; of which election notices shall be given: Provided, if, from any cause whatever, there should be no election held on the day appointed by this act, or by the directors of the first election, it shall be lawful to hold the election on another day, to be designated by the directors.

Stock. Sec. 10. Certificates of stock shall be given to the stockholders, which shall be evidence of the stock held; they shall be signed by the president and countersigned by the clerk. The stock shall be transferable on the books of the corporation only, personally, or by an agent, attorney, or by the administrator, executor, trustee, or guardian; but such stock shall at all times be holden by the corporation, or for any sum that may hereafter become due on contract made prior to such transfer.

Assessm'nts Sec. 11. The corporation shall have power to call for such proportion of the stock subscribed, not exceeding fifteen per

cent. of the amount of stock subscribed, every six months, as they may think proper, to be paid at such time and place as they may designate, by giving sixty days notice in at least two weekly newspapers printed in the immediate neighborhood of the railroad herein contemplated, or by giving written notice to the stockholders; in all such notices the amount on each share demanded, and the time and place of payment, shall be set forth; and if any stockholder shall neglect or refuse to pay such requisition within ten days after the time mentioned for such payment, the corporation may bring suit against such delinquent for the amount due in any court of competent jurisdiction, and recover the amount with two per cent. a month interest thereon for such detention; and if the amount cannot be made on execution, or if such delinquent is out of the State, then the corporation may, by an order on their books, declare such stock forfeited to the corporation, with whatever amount may have been paid thereon, and the same shall be thereby absolutely forfeited to the corporation; and no such delinquent, before the forfeiture of his stock, shall have the right to vote for directors, or receive any dividend on his, her, or their stock, until the corporation is fully paid and satisfied.

Bonds.

Sec. 12. The corporation shall require of all officers in their employ, bonds, with security to their acceptance, with such penalty as they may think proper, for the faithful performance of their respective duties.

To locate a road.

Route of road.

Sec. 13. The corporation, by their agents, shall have full power, from time to time, to examine, survey, mark, and locate the route of said railroad for a single or double track, commencing on the eastern line of the State, in a direction to the head of the Maumee bay, as near on a line between the head of Maumee bay and the rapids, as circumstances will permit, and running, on the best ground for the interest of the company and convenience of the public, to the west line of the State, in the most approved direction, to strike the rapids of the Illinois, or highest steamboat navigation of said river in the Illinois State: Provided, however, that if either of the State legislatures of Ohio or Illinois do grant the privilege to said corporation to construct said railroad through that portion of their States, to either or both of the designated points, then, and in that case, the said corporation shall commence at a suitable place at the head of the Maumee bay, on Lake Erie, and running on the best ground for the interest of the company and convenience of the public, through the State of Indiana, to the rapids of Illinois, in the State of Illinois, with full power to diverge from a direct line, when more favorable ground can be had for the construction of said road, the same not to exceed eighty feet in width.

Same.

Sec. 14. And for the more effectually uniting and con-

necting the interest of said route, if the United States Government do cause the said road to be surveyed and located from the head of the Maumee bay to the rapids of the Illinois river, by a United States engineer, against the 15th day of October, 1835, then, and in that case, the said corporation shall adopt the route so located by the United States engineer, as the Buffalo and Mississippi railroad route, from the head of the Maumee bay to the rapids of the Illinois river; provided Ohio and Illinois give their consent to said location, otherwise to remain as in the thirteenth section specified.

Surveys, &c. Sec. 15. And, for the purpose of making such examination and location, it shall be lawful for the corporation, by their agents and persons in their employ, to enter upon any land to make surveys and estimates, and for the purpose of searching for stone, gravel, wood, or other materials necessary for the construction of said road; but no stone, gravel, wood, or other materials, necessary for the construction of said road, shall be taken away from any land without the consent of the owner thereof, until the rate of compensation shall be ascertained and paid.

Contract for land, &c. Sec. 16. It shall be lawful for the corporation, either before or after the location of any section of the road, to obtain from the person or persons through whose land the same may pass, a relinquishment of so much of the land as may be necessary for the construction or location of said road, as also the stone, gravel, timber, or other materials that may be obtained on said route, and may contract for stone, gravel, timber, and other materials; and it shall be lawful for said corporation to receive, by donations, gifts, grants, or bequests, land, money, labor, property, stone, gravel, or other materials, for the benefit of said corporation; and all such contracts, relinquishments, donations, gifts, grants, and bequests, made and entered into in writing by any person or persons capable in law to contract, made in consideration of such location, and for the benefit of the corporation, shall be binding and obligatory; and the corporation may have their action at law, in any court of competent jurisdiction, to compel the observance of the same: Provided, that all such contracts, relinquishments, donations, gifts, grants, and bequests, shall be fully and plainly made in writing, signed by the party making the same.

Jury in case, &c. Sec. 17. That in all cases where any person through whose land the road may run shall refuse to relinquish the same, or when a contract between the parties cannot be made, it shall be lawful for the corporation to give notice to some justice of the peace in the county where the difficulties may occur that such facts do exist, and such justice of the peace shall thereupon summon the owner of such land to appear before him on a particular day, within ten days thereafter, and shall ap-

point twelve disinterested persons of the neighborhood, who shall, after taking an oath faithfully and impartially to assess the damages, if any, view the lands or materials; and after having taken into consideration the advantages as well as disadvantages the road may be to the same, and shall report thereon whether such person is entitled to damages or not, and if so, how much; and shall file such report with such justice; whereupon such justice shall enter judgment thereon, unless for good cause shown; and in case either party should show sufficient cause why judgment should not be entered, the justice may grant a review of the premises either with or without the costs: Provided, that either party may at any stage of the proceedings appeal to the circuit court of the proper county as in other cases; and such court shall appoint reviewers as above directed, who may report at that or the ensuing term, at the discretion of the court; and the judgment of the circuit court shall be final.

Minors, &c.

Sec. 18. And in all cases where the owner or owners of such land or materials shall be minors, insane persons, or reside out of the county in which such land is situated, such justice shall cause three notices of the application made, and of the day fixed for the appointment of viewers, to be posted up in three of the most public places in the county, and if no person shall attend on the day named in said notices, the said justice shall adjourn the same until that day two weeks, at which time he shall proceed as if such person or persons had been duly notified to attend; and on such judgment being rendered, and the corporation complying therewith by the payment of costs or damages awarded against them, the corporation shall be seized of the lands or materials; costs shall be allowed or awarded against either party at the discretion of the justice.

Using county roads.

Sec. 19. That if it shall be found necessary and advantageous to the location and construction of said railroad, the corporation shall have the right to lay the same along and upon any State or county road: Provided, however, that before such location shall be made the corporation shall make application to the county commissioner of the proper county for such right, and the said commissioners are hereby vested with the power to grant the same by an order entered on the record: Provided, also, that such right shall be granted on condition that the corporation shall leave a sufficiency of said State or county road in as good repair for county use as it was previous to such occupation.

Titles.

Sec. 20. That when said corporation shall have procured the right of way as herein before provided, they shall be seized in fee simple of the right to said land, and shall have the sole use and occupancy of the same, and no person, body politic or corporate, shall in any way interfere therewith,

molest, disturb, or injure any of the rights and privileges hereby granted, or that would be calculated to detract from or effect the profits of said corporation.

Times of making road

Sec. 21. The said corporation shall commence the construction of said road any time within five years. The said route through the State of Indiana shall be divided into four divisions; the first division to commence at the east line of the State, thence west to range line, dividing five and six east, shall be taken and considered the first division; that part from range line, dividing ranges five and six east, to the Michigan road, to be taken and considered the second division; and that part from the Michigan road to the range line, dividing ranges four and five west of the principal meridian, shall be taken and considered as the third division; and from said last mentioned range line to the west of the State, to be taken and considered as the fourth division of said railroad; and the corporation may from time to time construct so much of said road, or any division thereof, as may be within the ability and to the interest of the company, and shall complete it within twelve years from its commencement: Provided, that if the said road shall not be completed within the time aforesaid the general assembly may, for good cause shown, give further time to complete the same: Provided, also, that if any of said road shall be completed within the time aforesaid, that then and in that case all the rights, privileges, and benefits granted to said company in that act, shall be extended to and invested in said corporation to such part of said road as shall then be completed.

Highways.

Sec. 22. It shall be the duty of the corporation whenever any State or county road now established shall cross or may hereafter cross the railroad, to make and keep in repair good and sufficient causeways, so that the free use of the State or county road shall not be obstructed; and in all cases where any persons shall own land on both sides of said road, and

Private ways.

there shall not be any causeway for a public road leading from one tract to the other, the owners of said land shall have the right, free of charge, to cross the same, and to make such causeways as may be necessary for the convenience of said owner: Provided, that said owner of land shall not injure or obstruct said railroad.

Cars, &c.

Sec. 23. That it shall be lawful for said corporation to place or prescribe the kind of carriages that may be used on said railroad, whether propelled by steam or other power, for the transportation of passengers, for all kinds of produce, lumber, goods, wares, and merchandise, or any other kind of property; and for this purpose the corporation may construct said railroad of wood, stone, or iron, or of all, with such locks, turns, gates, bridges and aqueducts, culverts, toll and warehouses, as may be considered necessary for the interest

of the company and convenience of the public; and the corporation may charge tolls and freights on such part of the road as may be in a sufficient state of forwardness, although the whole be not finished; and they may charge for travel and transportation on the same when it is graded and bridged, although the rails may not be laid so as to admit carriages thereon.

Tolls.

Sec. 24. The corporation may charge and receive such tolls and freights for the transportation of persons, commodities, and carriages, on said road or any part thereof, as shall be for the interest of said company, and the same to change, lower, or raise at pleasure: *Provided*, That the rates established from time to time shall be posted in some conspicuous place or places on said road.

Same.

Sec. 25. That when the aggregate amount of dividends declared shall amount to the full sum invested and ten per cent. per annum thereon, the legislature may so regulate the tolls and freights, that no more than fifteen per cent. per annum shall be divided on the capital employed, and the surplus profits, if any, after paying the expenses and reserving such proportion as may be necessary for future contingencies, shall be paid over to the treasurer of state for the use of common schools; but the corporation shall not be compelled by law to reduce the tolls and freights so that a dividend of less than twenty per cent. cannot be made; and it shall be the duty of the corporation to furnish the legislature, if required, with a correct statement of the amount of the expenditures, and the amount of profits after deducting all expenses; which statement shall be made under the oath of the officers whose duty it shall be to make the same.

Dividends.

Sec. 26. Semi-annual dividends of so much of the profits as the said corporation may deem expedient shall be made on the first Monday of December and June annually, unless the directors fix on a different day, and pay the stockholders as soon thereafter as they can with convenience, and no dividends shall be made to a greater amount than the nett profits after deducting all expenses; and the directors may reserve such proportion of the profits as a contingent fund to meet subsequent expenses as they shall deem proper.

Malicious injuring.

Sec. 27. That if any person or persons shall knowingly or wilfully injure or obstruct said road or any part thereof, or shall break, destroy, or deface any work, edifice, toll or warehouse belonging thereto, such person or persons so offending shall pay to the corporation five times the amount of damages actually done, with costs of suit, to be recovered by the corporation, before any court having competent jurisdiction: *Provided*, That all actions commenced [by the corporation, for the recovery of damages shall be commenced]

within six months from the time such cause of action accrued, and not after.

State subscribes. Sec. 28. The State reserves the right to subscribe for eight hundred shares of the stock at any time within four years from the first commencement of said road.

Counties subscribe. Sec. 29. It shall be lawful for the county commissioners of each and every county through which said road may pass, for and on behalf of said county, to authorize, by an order, as much of the stock to be taken as they may think proper.

Statements to stockholders. Sec. 30. It shall be the duty of the corporation to cause a full statement of the affairs of the company to be made and exhibited to the stockholders at each annual election, or at any other general meeting of the stockholders, at least once in each year.

Meetings called by, &c. Sec. 31. Any number of the stockholders owning one-third of the stock, may call a general meeting of the stockholders, by giving four weeks' notice in one or more newspapers, and specifying in said notice the object of the call; and, a majority of the stockholders being represented, they may make such order, relative to the concerns of the company, as a majority may determine on.

May borrow money. Sec. 32. The said corporation, by their authorized agent, shall have power and authority to negotiate for, and borrow money on the said corporation, to the amount of two hundred thousand dollars, from any person or persons, States, United States, or corporation, at a rate of interest not to exceed six per cent. per annum, for such a length of time as they may think proper, and can be agreed on by the parties for the payment of said money so borrowed for the use of said corporation. The work and other property of said corporation, together with the profits on said road, the individual stock in said corporation, and the individual stockholders thereof, shall each be liable for said loan, or so much thereof as contracted for during the time in which they are respectively such stockholders, to an amount equal to their stock respectively, and in that proportion may be recovered by a suit in equity or otherwise.

Sec. 33. The corporation may, by contract, admit the intersection of said road with any other railroad, turnpike, or collateral road.

Transporting troops. Sec. 34. The State of Indiana, in time of war, shall have the right to transport troops, munitions of war, and provisions, free of toll on said road.

Same. Sec. 35. That, should the Congress of the United States make a donation of lands to aid in the construction of said railroad, or a donation of money, which may be accepted by the corporation, then, and in that case, the United States, in time of war, shall have the right to transport

troops, munitions of war, and provisions, free of toll on said road.

Sec. 36. Should the capital herein granted not be sufficient to accomplish the intended work, the corporation may increase the same; and the stockholders may, at any general meeting, reduce the number of directors to any number not less than five. May increase capital.

Sec 37. That, when the road is located, it shall be the duty of the corporation to cause a plan of the same to be deposited in the office of the secretary of State, and from and after that time it shall not be lawful for said corporation to alter or change any part of said location, unless said corporation pay the owner or owners of said land on said changed route the amount of damage they may sustain by such re-location. Plan of road with secretary of State.

Sec. 38. This charter is limited to seventy-five years in its duration. Duration of charter.

Sec. 39. The corporation shall cause to be kept a fair account of the whole expenses of making and repairing said railroad, and every section thereof, with all incidental expenses; and also a fair and accurate account of tolls received; and the State shall have the right to purchase the stock of said company at any time after thirty-five years, by paying said corporation a sum of money, which, together with the tolls received, shall equal the costs and expenses of said railroad as aforesaid, with an interest of eighteen per cent. per annum; and the books of said corporation shall be always open for inspection of any agent of State appointed for that purpose by the legislature; and if said corporation shall neglect or refuse to exhibit at any time their books and accounts agreeably to this section when thereunto required, then all the rights and privileges granted by this act shall cease and be ended. State may purchase.

Sec 40. The railroad company created by this act shall have the right to commence the construction of said road at such places on the said contemplated route as the corporation may think best for the interest of the company and public good.

Sec. 41. This act to be in force from and after its passage.

Schedule B.

An act to amend an act entitled "An act to incorporate the Buffalo and Mississippi Railroad Company," approved Feb. 6, 1835. (*Approved Feb.* 6, 1837.) Passed Feb. 6, 1837.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That the Buffalo and Mississippi Railroad Company be hereafter known and designated by the name Name changed.

and style of the "Northern Indiana Railroad Company;" under which name and style the said corporation shall hereafter transact all business under and by virtue of the act incorporating the same.

Non-resident subscribers.

Sec. 2. The subscribers to the capital stock of said company, residing in other States, shall be entitled to the like privileges and immunities of the citizen stockholders of the State of Indiana.

This act to take effect, and be in force, from and after its passage.

Schedule C.

Passed Feb. 7, 1838.

An act to amend an act entitled "An act to incorporate the Buffalo and Mississippi Railroad Company," approved February 6th, 1835. (*Approved Feb. 7*, 1838.)

Section repealed.

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That the twenty-eighth section of the act, to which this is an amendment, be, and the same is hereby, repealed.

Jurors.

Sec. 2. That the number of jurors, required by the seventeenth section of said act, to assess damages for the right of way, or for materials for the construction of said road, be, and the same are, reduced to the number of three; and that so much of said seventeenth section, as comes within the purview of this section, be, and the same is, hereby repealed.

Gifts, &c., to company.

Sec. 3. That any donation, gift, grant, or bequest, made in land, property of any description, or materials, to said company, in consideration of the location of said road, or otherwise, or for the benefit of the corporation, shall authorize the company to sell, or otherwise dispose of, the same, in such manner as in their opinion may be best calculated to aid them in the prosecution of the work.

Purchase of lands.

Sec. 4. The said company are hereby authorized to purchase such lands along or near the line of said road as they may deem useful to aid them in the construction thereof, not exceeding eighty acres in any one tract, and the same to sell and convey, or otherwise dispose of, at pleasure.

Loans.

Sec. 5. The power of said company to contract for a loan or loans, is hereby extended to any sum not exceeding one million of dollars, and for the payment of such interest on the same as the parties contracting may agree upon, not exceeding eight per cent. per annum for one hundred dollars. So much of the thirty-second section of the act, to which this is an amendment, as comes within the purview of this section, be, and the same is hereby, repealed.

Sec. 6. This act, and the act to which this is an amendment, is hereby declared to be a public act, and as such shall

be liberally construed in any and all courts of justice for all beneficial purposes.

Sec. 7. This act to be in force from and after its passage.

Schedule G.

An act to amend an act entitled "An act to incorporate the Buffalo and Mississippi Railroad Company," approved February 6th, 1835. (*Approved Jan.* 6, 1846.) Passed Jan. 6, 1846.

Whereas, by the 13th section of said act, it is required that the route of said road shall extend westwardly, in a direction towards the rapids of the Illinois river, in the State of Illinois. And whereas it is represented to this General Assembly that it is important for the interest of said company, and to the public, that said road should diverge from that route in a direction towards Chicago, in said State of Illinois. Therefore,

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That said company be, and they are hereby, authorized to extend the route of said road westwardly, from the town of Laporte, in Laporte county, by the way of Michigan City, in said county, to the western line of said State, on the best ground and in the most suitable direction towards Chicago, in the State of Illinois. Change of route.

Sec. 2. Said company is hereby authorized to enter into any mutual contract with any company, or companies, now incorporated, or hereafter to be incorporated, within the States of Ohio and Illinois, or either of them, by which the portions of said road within the States of Ohio, Indiana, and Illinois, forming together a continuous line from the Maumee bay, in Ohio, to Chicago, in Illinois; or the portion in Indiana, and either of the other States, shall form one road, to be known by one common name, and by which the capital stock of each and all, or any two of said companies, shall become merged and consolidated into one joint and common stock, equal in amount to the capital of each and all of said several companies, or such two of them who shall enter into such contract, and so that the stockholders in said consolidated company shall have one common seal, president, and board of directors, which common board of directors shall consist of not more than twelve, or less than five; and said company, when so consolidated, shall possess and enjoy all powers, rights, privileges, immunities, and franchises, granted to, or vested in, said Buffalo and Mississippi Railroad Company by said original act of incorporation, and all amendments thereto. Contracts with the Co. in other States. Consolidation. New name.

Sec. 3. Should such consolidation take place and a new name be adopted by said consolidated company, such new

name shall become, to all intents and purposes, the corporate name of said company, when and after a notice thereof shall have been filed in the office of the secretary of State of the State of Indiana.

Sec. 4. In case any portion of the capital stock of said company, or of said consolidated company, should such consolidation take place, may be, at any time, owned by any person or persons who may at such time be non-residents of this State, but residents and citizens of some other State of the United States of America, then, and in such case, a number of the directors of said company, or of said consolidated company, bearing nearly the same proportion to the whole number of directors that the stock owned by such citizens and residents of such other State or States bears to the whole stock of said company, be residents and citizens of such other States, any thing in the sixth section of said original act of incorporation to the contrary notwithstanding: Provided, That the number of non-resident directors shall never, at any one time, exceed one-half of the whole number of directors.

Directory in each State.

Sec. 5. Said Buffalo and Mississippi Railroad Company, or said consolidated company, should such consolidation take place, are hereby authorized to construct a branch of said road from said town of Laporte, Goshen, South Bend, or Michigan City, southwardly, to the town of Lafayette, in the county of Tippecanoe, and thence to the west line of said State of Indiana, in a direction towards St. Louis, in the State of Missouri, on the best ground for the interests of said company; and for that purpose they are authorized to increase the capital stock of said company by any sum not exceeding two millions of dollars; and in the location, construction, and management of said branch road, and every thing connected therewith, said company shall be governed by the same regulations, so far as the same are applicable, prescribed in, and shall be fully vested with, and enjoy all the powers, rights, franchises, privileges and immunities, granted by said original act of incorporation, and the amendments thereto, in the same manner as if said branch road constituted an integral part of the original and main line of said road.

Branch to Lafayette, &c.

Sec. 6. Said company shall commence the construction of said branch road within four years from this time, and shall complete the same, with a single track, to said town of Lafayette within four years thereafter, otherwise all the rights and privileges relative thereto, hereby granted to said company, shall be forfeited; but should any part of said branch road be completed within such time, the part so completed, and the rights and privileges hereby granted, shall survive to said company, as to the part so completed.

Do. to be commenced.

Sec. 7. In case said company shall commence the main line of said road within two years from this time, and complete the same, with a single track, through the State of Indiana, within five years from this time, then, and in such case, no charter shall be granted to any other company to construct any other road or roads in the vicinity thereof, which would materially diminish or interfere injuriously with the profits of said road, within ten years thereafter, without the consent of said company; and in case said company shall complete said branch road within eight years from this time, in like manner, to said town of Lafayette, then, and in such case, no other charter shall be granted to any other company to construct any other road or roads in the vicinity of said branch, which would materially interfere with or diminish the profits of said branch, within ten years thereafter, without such consent. No other charter, in case.

Sec. 8. In case said company shall become consolidated with any other company or companies provided for in this act, the act of consolidation shall of itself render such company or companies, so consolidated, or any company formed under the provisions of this amendment, liable for all debts of said Buffalo and Mississippi Railroad Company incurred before such act of consolidation. Liability for debts.

Sec. 9. That in the permanent location and establishment of the railroad authorized by the original charter, to which this is an amendment, the same shall be located, established, and constructed, to and through the county towns of the counties of Steuben, Lagrange, Elkhart, St. Joseph, Laporte, and also to Michigan City, in the county of Laporte. Located through. County towns.

Sec. 10. The acceptance of any part of the amendment provided for by this act shall be an acceptance of the whole.

Sec. 11. The privileges granted in the fifth section of this act shall not be enjoyed by said company, or any company or companies formed or consolidated under the provisions of this act, unless the main line of said road shall be constructed.

Sec. 12. This amendment, like said original act of incorporation, and all former amendments thereto, is hereby made and declared to be a public act, and it shall be in force from and after its passage.

Schedule H.

An act supplemental to the act approved January 6, 1846, *entitled, "An act to amend an act entitled an act to incorporate the Buffalo and Mississippi Railroad Company," approved February* 6, 1835. *Approved January* 20, 1846. Passed Jan. 20, 1846.

Sec. 1. Be it enacted by the general assembly of the

Amendment of prior act.

State of Indiana, That it shall be lawful for said Buffalo and Mississippi Railroad Company, in the permanent location and establishment of said railroad through the counties of Steuben and Lagrange, to locate, establish, and construct the same without reference to the county towns or seats of said counties of Steuben and Lagrange, if in their opinion their own and the public interests will thereby be promoted.

Sec. 2. This act to be in force from and after its passage.

SCHEDULE J.

An act to amend an act entitled "An act to incorporate the Buffalo and Mississippi Railroad Company," approved February 6, 1835, and the several acts amendatory thereto, (approved February 8, 1848.)

Commis'ers of western division.

Sec. 1. Be it enacted by the General Assembly of the State of Indiana, That Chauncey B. Blair, Andrew L. Osborn, Abraham P. Andrew, jr., William C. Hannah, and William J. Walker, and their successors in office, to be elected as herein after provided, shall be, and they are hereby, constituted a board of commissioners, to take charge of the western division of the Buffalo and Mississippi railroad; which said western division shall comprise all of said road west of Laporte, in the county of Laporte; and, as such board, they shall be vested with all the powers, rights, and capacities, touching the said western division, as are now possessed by the directors of said company; and shall, in and over said division, for the purposes of constructing, operating, and stocking said road, and for all purposes connected therewith, be clothed with all the rights, privileges, and franchises secured to the directors of said company by the charter thereof, or the amendments made or to be made thereto; and they are hereby authorized to construct all or any part of said road lying west of the village of Laporte, and also a branch of said road from Michigan City to the southern line of the State of Michigan, in the direction of New Buffalo, to connect with the road of the Michigan Central Railroad Company, with all proper fixtures, shops, depots, and other appurtenances.

For part of road west of Laporte.

And branch.

May contract for loans.

Sec. 2. Said board of commissioners, under the name and style of the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad, shall have full power and authority to enter into contract or contracts, agreement or agreements, with any person or persons, body or bodies politic or corporate in this State, or out of it, for a loan or loans of money for the purchase of iron and other materials for the construction of said branch road, and may contract to lease the same for such time as may be deemed expedient, or may in advance contract to make a lease of said branch

road and said fixtures, depots, shops, and appurtenances, in consideration of an advance of money wherewith to build the same. May lease branch.

Sec. 3. They shall, in like manner, have full power and authority to enter into any contract or contracts, agreement, or agreements, with any person or persons, body or bodies politic and corporate, either in the State or out of it, for any loan or loans of money, at a rate of interest not exceeding eight per centum per annum, payable semi-annually, and the principal payable at any time after ten years, subject to the provisions herein after provided for the construction of the main line of the said western division of said road, and proper and suitable buildings and appurtenances thereto, and stocking the same, and for change of the rail as herein after provided; and if any such loan or loans shall be obtained from the Michigan Central Railroad Company, or its stockholders, or through its agency, it shall be competent for the said commissioners to agree that the western division of said road, or any part of it, shall be constructed, and said money expended in said construction, under the direction and by the superintendent of the Michigan Central Railroad Company, and to place said western division of said road, or any part thereof, into the possession of said company, or the lenders of the said money, together with the stock, fixtures, and appurtenances thereof, under a mortgage or other conveyance by way of security, with such or like powers as are described in section one of the amendment to the charter of the Buffalo and Mississippi Railroad Company, approved January 21, 1839, or otherwise, as security for the repayment of said loan or loans, with full power to manage, operate, and control the same: Provided, that the said commissioners shall, in no case, by such mortgage or otherwise, encumber or exercise any control over said road east of Laporte, nor shall any debt created by them constitute any charge or liability upon or against any portion of railroad east of Laporte, or the stockholders thereof; subject, however, to be, and the same, on the demand of the said board of directors, shall be, restored to the possession and control of the directors of said company, upon the expiration of the period for which said loan or loans shall be made, and the completion of the entire line of the road of said company across the State; such change of possession, however, not to impair, or in any way affect, the validity of said mortgage, or the rights of the said mortgagees thereunder; and the said commissioners shall make any contract or agreement for the operation and stocking said western division of said road, and for the division of profits thereof, as they may deem advisable, and may be agreed upon between them and other contracting parties; and in case the

Loans for main line.

Mortgage road.

To revert in case.

lenders of said money, or the mortgagees, shall be compelled to enforce said security, by reason of any default in payment, and procure a sale of said road west of Laporte, or which may have been conveyed to them, then the purchasers at said sale shall be entitled to the like franchises and privileges as the Buffalo and Mississippi Railroad Company are now entitled to; and said franchises and privileges shall attach to and accompany said railroad: Provided, however, the franchises and privileges of the Buffalo and Mississippi Railroad Company, and its rights east of Laporte, shall in no wise be impaired or affected thereby; and said parties loaning said money, or said mortgagees, shall have full power, from time to time, to repair said road, and make such improvements, constructions, and erections, out of the earnings of said road, as may be deemed necessary to facilitate its business: Provided, that until the said western division of said road shall be restored to the possession of said directors of the Buffalo and Mississippi Railroad Company, the Michigan Central Railroad Company, or other party or parties in interest, whether as stockholders or lenders, shall use and operate the railroad upon their own account, and at their own risk and expense, and shall take and have all the proceeds thereof in lieu of said interest; and said commissioners may make such contract with the lenders for the division of profits, as between them and [the] stockholders, as may be deemed just and equitable; and the Buffalo and Mississippi railroad shall not be, until such surrender, liable for said interest, or for any expenditures for repairs, or for costs of operating the road, until said western division shall be restored to said directors as aforesaid, from which time said eight per centum interest shall become payable; and until that time said parties receiving said profits shall not be required to render any account of the revenues, business, or expenditures of or upon said road; and it shall be competent for said commissioners to agree that said western division shall remain in possession of said lenders until said loan shall become due and payable; and in case any permanent erections or improvement shall be made upon said road during said time, or in case it shall become expedient to place upon said road a T rail, the cost and expense of such improvement and change of rail shall be added to the amount of said loan.

Eastern part not affected.

Road restored to directors.

Sec. 4. Said parties or mortgagees shall render to the commissioners, and also to the directors, of the said Buffalo and Mississippi Railroad Company, a full statement of all the capital invested in the construction of said western division, and also of all additional investments and erections, and also for the change of the flat rail for the T or heavy rail, in case any such change may be deemed expedient.

Accounts to be rendered.

Sec. 5. In case it shall so happen, from any cause, that any portion of the Buffalo and Mississippi railroad shall not be completed within the time required by its charter, or the amendments thereto, such failure to complete said road shall not be deemed a breach or violation of said charter, or of the duties of said company thereunder; but all the rights and privileges granted to the said company and its charter, shall attach to, and become, the rights and privileges, and the charter of the portion of said road which shall be completed; and no act or omission of duty done or committed by the company or directors, or said commissioners thereof, which may be a cause of forfeiture of its franchises, or any part thereof, shall, in any way, impair or affect the rights of the lenders of said money, or the said mortgagees or their assigns, secured to them under said charter and amendments thereto.

If whole r'd not completed, charter not forfeited.

Sec. 6. In case of any appeal from the judgment of any justice of the peace, upon any report of any jury for the appraised [amount] of damages touching the right of way, or for lands taken for the purpose of constructing thereon the road of said company, as provided in its charter and amendments thereto, such appeal shall not prevent the said company from proceeding in the construction of said road over such lands, nor deprive it of its right of entry thereon for that purpose, which right is hereby expressly granted: Provided, that before said company shall so enter and construct said road, it shall either tender to the owner of said lands the full amount of damages which shall have been adjudged to him or her, or shall pay the same into the court to which such appeal may be taken, subject to the order of said court; and every such appeal shall be taken within twenty days from the rendition of said judgment, and not afterwards, and acceptance of the amount of the judgment when tendered, shall, in all cases, be taken to be a waiver of the right to appeal, and a certified copy of the transcript of the judgment of the said justice, or of the court to which such appeal shall be taken, may be taken by the company, and caused to be recorded in the recorder's office of the county where said lands are situate, and such record shall be notice to all the world of the right of the company; and if, in case of any appeal, judgment shall be recovered against said company for a larger amount than was recovered before said justice, then said company shall, within sixty days from the date of said judgment, pay the difference between the amount of the judgment before the justice and that before the said court, in case the amount of the judgment before the justice shall have been previously paid into court; and if not, then the whole amount of said judgment, in the appellate court, shall be paid to the owner of said land within the same time, or,

Appeals from report of jury.

Tender.

May construct road.

in default thereof, execution may issue therefor; and in case it shall, at any time, be found that the said company is or shall be in possession of land, the title to which has not been made perfect in said company, it may obtain title to the same by appraisal, judgment, and the payment therefor, as in other cases provided for in said charter, and amendments thereto.

Commis'ers open books for subscription.

Sec. 7. In case any person shall wish to become a stockholder in said western division of said road, the said commissioners shall have power to open books at Laporte and Michigan City, under such regulations as they may deem proper, for subscription of stock, and shall have and exercise the same power to collect the subscriptions, and enforce payment thereof, as the charter of the said company secures to the directors thereof, and in the same manner; and in case loans of money should also be made, the said commissioners may make such agreement with the lenders thereof, relative to the dividend upon said stock, as between the said stockholders and lenders, as may be deemed by the parties contracting just and proper.

When road restored to Co., duty to run, &c.

Sec. 8. Whenever the portion of the road which may be mortgaged under this act, or placed in the control of the Michigan Central Railroad Company, or the lenders of said money shall be restored to the possession of the Buffalo and Mississippi Railroad Company, it shall, nevertheless, be the duty of the Buffalo and Mississippi Railroad Company, and it is hereby required, thereafter always to transport freight and passengers to and from Michigan City, and to and from the depots used by the Michigan Central railroad, at Michigan City, and over that portion of the Buffalo and Mississippi railroad between Michigan City and the Illinois line, for the rates of fare which shall not exceed per mile the lowest rates charged to any other parties on any portion of the whole of the said Buffalo and Mississippi railroad, or any road connected therewith, by contract or otherwise, in the division of profits, and shall draw the cars of the Michigan Central Railroad Company over the road between Michigan City and the Illinois line, with the engines of the Buffalo and Mississippi Railroad Company, in such a manner as to accommodate the Michigan Central Railroad Company in the transportation of its freights and passengers, allowing said company a just and reasonable compensation for the use of its cars; and the width of the track of the Buffalo and Mississippi railroad shall not, in any case, be changed so as to defeat this object; and in case it shall so happen that the money so loaned and secured by mortgage should not be paid, and said mortgage shall be foreclosed as contemplated in this act, and the property in said western division, or in said road from Michigan City to the Illinois line, shall become vested in any other parties

Rates of fare.

Draw cars of Central Co.

Width of track.

than the Buffalo and Mississippi Railroad Company, then, and in that case, the parties that shall become the purchasers, and their assigns, shall be forever required to transport freight and passengers over said road between Michigan City, or Laporte, as the case may be, and the Illinois State line, and to and from Michigan City, or Laporte, as the case may be, and to and from the road, or the Buffalo and Mississippi Railroad Company, in connexion therewith at either of those points, for rates of fare, which shall not exceed per mile the lowest rates charged to any other parties on any portion or the whole of the Michigan Central railroad, or any road connected therewith, by contract or otherwise, in the division of profits; and shall draw the cars of the Buffalo and Mississippi Railroad Company between Michigan City, or Laporte, as the case may be, and the Illinois line, with the engines of the party purchasing said road, or their assigns, in such a manner as to accommodate the Buffalo and Mississippi Railroad Company in the transportation of freight and passengers, allowing said company a just and reasonable compensation for the use of said cars, but charging freight as aforesaid, and in like manner, and in all respects; in case that portion of the Buffalo and Mississippi railroad east of Laporte, and between Laporte and Michigan City, shall be completed and put in operation before the said western division, or that portion of said road from Michigan City to the Illinois line shall be restored to the possession of the Buffalo and Mississippi Railroad Company, it shall be the duty of the Michigan Central Railroad Company, or other party or parties in interest, to transport the freight and passengers, and draw the cars of the Buffalo and Mississippi Railroad Company over said western division, or the said road from Michigan City to the Illinois line, so as to accommodate the Buffalo and Mississippi Railroad Company in the transportation of freight and passengers, and subject to the same terms as the charges for freight, and pay for the use of cars.

If not restored holders to run.

Rates.

Cars drawn.

Sec. 9. In case said road shall be sold under said mortgage, and the property therein, and the franchises thereof, shall become vested in any parties other than the Buffalo and Mississippi Railroad Company, or in case said portion of said road should remain in the possession of said company, and the charter of said company on the residue of said routes should by any contingency become forfeited, and that subsequently said charter should be revived, or a new one granted, then, and in that case, the parties that shall become purchasers, or otherwise have possession of said portion of said road, and their assigns, shall be required forever to transport freight and passengers over the said road between Michigan City, or Laporte, as the case may be, and the Illinois State To

Road sold under mortgage.

line, to and from Michigan City, or Laporte aforesaid, and to and from the road of said company at Michigan [City,] or Laporte as aforesaid, organized under such renewed or newly granted charter for rates and fare, which shall not exceed per mile the lowest rates charged to any other parties, on any portion or the whole of the said Michigan Central railroad, and shall draw the cars of said newly organized company on and over the road between Michigan City, or Laporte as aforesaid, and the Illinois line, with the engines of the said parties purchasing or owning said road, or their assigns, in such a manner as to accommodate such newly organized company in the transportation of its freight and passengers, allowing said company a reasonable compensation for the use of its cars, but charging freight as aforesaid.

Rates of fare.

Cars drawn.

Forfeiture in case.

Sec. 10. In case the Michigan Central Railroad Company, or other persons or party constructing said branch railroad, or for whom the same may be constructed, or their or either of their assigns, shall enter into any arrangements, either with the Southern Michigan Railroad Company, or the Erie and Kalamazoo Railroad Company, or any other railroad company in Michigan, for the formation of any connexion therewith, except as provided in this act, whereby either freight or passengers, to or from Toledo, shall be carried on said branch road from Michigan City to the northern State line, and thereby open a communication between Toledo and Chicago, to the detriment of the Buffalo and Mississippi railroad; until the same shall be completed through between those two points, it shall work an entire forfeiture of the said branch road, and all the rights, privileges, and franchises thereto, herein granted to the said Central Railroad Company, or other persons for whom, or by whom, the said branch road may be undertaken or constructed, or their assigns.

Commis'ers chosen annually.

Sec. 11. The said board of commissioners created by this act shall hold their offices until said contract or contracts for said loans shall have been made, and thereafter they shall be elected annually by the stockholders, who shall become such in the western division of the Buffalo and Mississippi Railroad Company, upon the first Monday in January of each year, or upon such other day as shall be by said board appointed; and in case no election shall be had upon the day hereby appointed, the commissioners last elected or appointed shall hold their offices until a new election shall be had; said commissioners may be elected from stockholders living either within or out of the State, and shall have power to choose a president from among their number, and also to appoint a secretary and treasurer of said board, and a majority of said board shall be a quorum to transact all business; and they

shall enter into contracts or agreements in the name of the Buffalo and Mississippi Railroad Company, by the board of commissioners for the western division of said road, and may use a corporate seal, which shall be the seal of the said board or of the said company; but they shall exercise no control, or have any thing in any way to do with or encumber that portion of said road lying east of Laporte; and the said board of commissioners shall be dissolved whenever the Buffalo and Mississippi railroad is completed through the entire line of its route. How contract. Seal.

Sec. 12. The present outstanding debt of the Buffalo and Mississippi Railroad Company shall, in case any loan of money shall be made for the construction of the western division of said road, be a charge upon the stock subscribed for said division, and upon said commissioners; and it shall be the duty of said commissioners to procure the same to be cancelled, paid, or otherwise discharged, and save the said company from any liability by reason thereof, and relieve it from all obligations to pay the same. Debt to be paid.

Sec. 13. The present directors shall, when this act is accepted, surrender up their stock to be cancelled, and any and every stockholder of stock subscribed previous to the first of January, 1848, may and shall have the right, upon request, to have his said stock cancelled entirely; and so far as the said stock shall be surrendered up and cancelled, it shall be the same as if it had never been subscribed for, and the directors of said company shall cancel all such surrendered and all forfeited stock; and books shall from time to time be opened, and stock subscribed, in the same manner, and to the same extent, as if such cancelled stock had never been taken. Stock cancelled. New subscriptions.

Sec. 14. This act shall take effect and be in force from and after the time when the same shall be accepted as a part of the charter of the Buffalo and Mississippi Railroad Company, by a resolution of the board of directors thereof, entered upon the records of said board in full, and from that time the said commissioners shall be fully vested with the powers herein conferred upon them; and from that time also the places of the present board of directors shall be vacated, and the acceptance of this act by them shall be taken as a resignation of their several offices as directors of said company; and from that time until the said western division of said road shall be redeemed from said mortgage or other conveyance by way of security for said moneys loaned, or until the whole line of the Buffalo and Mississippi Railroad shall be completed across the State; the directors of said company shall be elected by the stockholders of said company, whose stock shall have been subscribed in books opened, or to be opened therefor, Act take effect. Directors chosen by stockholders east of Laporte.

in counties along the line of said road east of Laporte; and said directors, so to be elected, shall be residents of the said eastern counties, excepting as by the charter of said company and the amendments thereto, they may be non-residents of the State of Indiana; and said part of said road lying east of Laporte shall be entirely under the control of the stockholders, whose stock shall have been so subscribed; but said directors and commissioners shall mutually report to each other all proceedings therein, expenditures, and the revenues of their respective divisions, and such other matters as may be proper whenever requested, but not oftener than once in each year; and after said western division shall be replaced in the possession of the directors of said company as provided in this act, then and from that time its affairs shall be controlled by the stockholders generally under the charter, and directors shall be elected by them from any part of the State or elsewhere, under the provisions of the charter and amendments thereto, in the same manner as if this act had never been passed.

Road there under their control.

Mutual reports.

New directors appointed.

Sec. 15. In case of the acceptance of this act as an amendment to the charter and the resignation of the present directors, Thomas S. Stanfield, and Joseph L. Jernegan, of the county of St. Joseph, and James H. Barnes and Erastus W. H. Ellis, of the county of Elkhart, and Delevan Martin, and Drusus Nichols, of the county of Lagrange, and Madison Marsh, of the county of Steuben, shall be, and they are hereby, constituted a board of directors for the Buffalo and Mississippi Railroad Company, as the successors of the now existing board of directors, to hold their offices as such until their successors in office are duly elected, according to the provisions of the charter and amendments for the election of directors, with the power to fill vacancies in their board, and to organize the same, and to make all necessary orders, and to do all acts which may be made or done by the directors of said company, under the original charter or the amendments thereto, except as otherwise provided in this act, and to receive from the present directors all records or other books and papers, and all stock and other property or thing belonging to said company; the directors of said company shall have power to make all such necessary contracts with any railroad company or companies, either in Ohio or Illinois, for the passage of cars or otherwise, as shall accommodate said Buffalo and Mississippi Railroad Company in the transportation of its freight passengers; but they shall in no case incumber the western division of said road, nor shall any debt created or contracted hereinafter by the directors of the Buffalo and Mississippi Railroad Company, constitute any charge or liability upon or against the western division of said road, or the stockholders thereof, until the said western division

Powers,

Contracts with other companies.

No charge on western division.

shall be restored to the possession of the directors of said road under the provisions of this act: *Provided*, That if either of the above persons shall not, at the time of the organization of said board, be a stockholder in said company, it shall vacate his said office as such director, which vacancy shall be filled as in other cases.

Vacancy &c. Directors.

Schedule D.

An act to amend an act, entitled "An act to amend an act to incorporate the Buffalo and Mississippi Railroad Company," approved February 7, 1838. (*Approved January 21, 1839.*)

Passed Jan. 21, 1839.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That to secure the payment of any sum of money borrowed by the Buffalo and Mississippi Railroad Company, under the 5th section of the act to which this is an amendment, the directors of said company have full power and authority hereby granted to pledge or hypothecate, by way of bond, with or without seal, mortgage, trust, or otherwise, the railroad by them constructed under their charter, with all its privileges, appendages, appurtenances, and all property, franchises, and chartered rights of said company; and also any stock remaining unsubscribed, or forfeited to said company by non-payment of instalments; and such pledge, hypothecation, bond, mortgage, or trust, shall be valid for the securing of the payment of any sum or sums so borrowed, with the interest thereon accruing, which the same may be given to secure. And in case default shall be made in the money so borrowed and secured, the person or persons, body politic or corporate, their legal representatives, successors, or assigns, claiming under such pledge, hypothecation, bond, mortgage, or trust of stock, may, by due process of law, acquire, have, hold, use, occupy, and enjoy, the said road, with its appurtenances, implements, and property of said company, and take and use the tolls, rents, issues, profits, and advantages thereof, during the whole residue of the term for which said company is chartered or incorporated, in as full and complete a manner as the stockholders of said company could or might have had, used, or enjoyed the same; subject, nevertheless, to all the restrictions, limitations, and conditions claimed in the act incorporating said company. And any stock so pledged or hypothecated may, on failure of payment aforesaid, be sold at public auction, to the highest bidder, by the person or persons, body politic or corporate, to whom it may be pledged, or by their legal representatives, successors, or assigns, giving twenty days previous

May secure money borrowed, by pledge, or mortgage of road and stock.

Road or stock mortgaged may be sold.

notice in two newspapers on or near the line of said railroad, setting forth the time and place of such sale; and any deed by which any pledge or hypothecation, bond, mortgage, or trust, shall be given by virtue of this act, shall be entered of record in the office of the recorders of counties through which said road may run, the same being first acknowledged according to law.

Mortgage recorded.

County b'ds rec've mortgages and issue county bonds.

Sec. 2. The boards doing county business in the several counties through which the Buffalo and Mississippi railroad passes, are hereby authorized and empowered to act as trustees for said company, to receive mortgages on real estate or other securities in trust for said company, and issue county bonds thereon to such amount, (not exceeding two-thirds the value of the real estate so mortgaged, or other securities,) and made payable at such time and place, and at such rate of interest (not exceeding eight per cent. per annum) as may be agreed upon between said board or boards doing county business and the directors of said company.

Stock forfeited for non-paym't.

Sec. 3. And be it further enacted, That the directors of the company may, at their option, declare any stock, with the amounts paid thereon, forfeited to the company, on which the stockholder is delinquent for three or more instalments; any thing in the eleventh section of the original charter of said company to the contrary notwithstanding.

This act to take effect and be in force from and after its passage.

Schedule E.

Passed Jan. 28, 1843.

An act to amend an act, entitled "An act to incorporate the Buffalo and Mississippi Railroad Company," approved January 28, 1843.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That all elections heretofore holden by said company for officers thereof, be, and the same are hereby, legalized.

Records evidence in c't.

Sec. 2. The books and recorded proceedings of said company, and the officers thereof, may be used and read in evidence before any justice of the peace, or in any court of record in any and all cases wherein said company shall be a party, and shall be prima facie evidence of the matters therein contained.

Sec. 3. This act to take effect from and after its passage.

SCHEDULE F.

An act to amend an act, entitled "An act to incorporate the Buffalo and Mississippi Railroad Company," approved February 6, 1835, and all acts amendatory thereto, (approved January 13, 1845.) Passed Jan. 13, 1845.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That the time for commencing and completing one-half of said road be extended the further time of five years, and for completing the other half of said road the further time of ten years. Times for making road extended.

Section 2. The president and directors of said company are authorized and empowered to agree with any company or companies incorporated, to construct a railroad from Buffalo to the Mississippi river, or for any intervening section on said route, for connecting routes of travel, and general management in business through the whole extent of the roads of the contracting companies, (or any part thereof completed, so as to insure regular intercourse through the entire line of the road, or any part completed,) on such terms and conditions, with division of profits and receipts, as said companies may stipulate. Company may agree with other companies for connexions, &c.

Section 3. This act to be a public act, and to be in force from and after its passage.

SCHEDULE I.

An act to amend an act, entitled "An act to incorporate the Buffalo and Mississippi Railroad Company," approved February 6, 1835. (Approved Feb. 7, 1838.)

Section 1. Be it enacted by the General Assembly of the State of Indiana, That the twenty-eighth section of the act, to which this is an amendment, be, and the same is hereby, repealed. Section repealed.

Section 2. That the number of jurors required by the seventeenth section of said act, to assess damages for the right of way, or for materials for the construction of said road, be, and the same are, reduced to the number of three; and that so much of said seventeenth section as comes within the purview of this section, be, and the same is hereby, repealed. Jurors.

Sec. 3. That any donation, gift, grant, or bequest, made in land, property of any description, or materials, to said company, in consideration of the location of said road, or otherwise, or for the benefit of the corporation, shall authorize the company to sell, or otherwise dispose of the same, in such manner as in their opinion may be best calculated to aid them in the prosecution of the work. Gifts, &c., to company.

Sec. 4. The said company are hereby authorized to pur- Purchase lands.

chase such lands along or near the line of said road as they may deem useful to aid them in the construction thereof, not exceeding eighty acres in any one tract, and the same to sell and convey, or otherwise dispose of, at pleasure.

Loans. Sec. 5. The power of said company to contract for a loan or loans is hereby extended to any sum not exceeding one million of dollars, and for the payment of such interest on the same as the parties contracting may agree upon, not exceeding eight per cent. per annum for one hundred dollars. So much of the thirty-second section of the act, to which this is an amendment, as comes within the purview of this section, be, and the same is hereby, repealed.

Sec. 6. This act, and the act to which this is an amendment, is hereby declared to be a public act, and, as such, shall be liberally construed in any and all courts of justice, for all beneficial purposes.

Sec. 7. This act to be in force from and after its passage.

Schedule K.

Passed Jan. 5, 1849. *An act relative to the commissioners of the western division of the Buffalo and Mississippi Railroad Company, approved January 5*, 1849.

Commis'ers construct branch to Lafayette, &c. Section 1. Be it enacted by the General Assembly of the State of Indiana, That the board of commissioners of the western division of the Buffalo and Mississippi Railroad Company, are hereby authorized and empowered to construct, run, manage, and operate the branch specified in section five (5) of an act entitled "An act to amend an act entitled an act to incorporate the Buffalo and Mississippi Railroad Company, approved February 6, 1835," approved January 6, 1846, and for that purpose shall possess and enjoy all the powers and capacities, and have all the privileges and immunities granted to the Buffalo and Mississippi Railroad Company.

Time when. Sec. 2. Said commissioners may construct said branch as soon as that part of the main line between Laporte and Michigan city shall be completed, and complete the same within six years thereafter; and it shall constitute a part of the western division of said road, and may be constructed, managed, run, and operated as such: Provided, that nothing herein contained shall be so construed as to require or authorize the said Buffalo and Mississippi Railroad Company to redeem said branch, but the same shall be constructed, run, managed, and operated forever by the board of commissioners of said western division, and their successors, or the lenders of [the] money, (as the case may be,) as is provided in section three of an act entitled "An act to amend an act [entitled an act] to incorporate the Buffalo and Mississippi Railroad

Company," approved February 6, 1835, and *and* the several acts amendatory thereto, approved February 8, 1848, and the costs thereof shall not, at any time, constitute a change (charge) upon the said Buffalo and Mississippi Railroad Company, nor shall said company, at any time, have or exercise any control over said branch, or any part thereof. And for the purpose of constructing, managing, running, and operating said branch, the said board of commissioners of said western division, and their successors in office for ever, are hereby constituted a body politic and corporate, with perpetual existence, during the life of the said original charter, with such powers, for the purposes aforesaid, as are specified and given in the amendment aforesaid, approved February 8, 1848: And provided, further, that in case the said Buffalo and Mississippi Railroad Company shall redeem, as provided and allowed in the amendment last aforesaid, the said board of commissioners, or lenders of the money, or owners of the said branch, as the case may be, shall be entitled to all the privileges on the road between the junction of said branch and the main line of said road and Lake Michigan, and from thence to, and from, the Illinois State line, secured to the Michigan Central Railroad Company by the eighth section of the amendment last aforesaid.

Commis'ers body corporate;

With privileges on main line.

Sec. 3. This act shall be a public act, and shall be in force from and after its acceptance by said board of commissioners of the western division of said road, and all laws conflicting with the provisions of this act are hereby repealed.

Schedule K 2.

An act authorizing railroad, plank road, turnpike road, and macadamized road companies to borrow money and to secure the repayment thereof by mortgage.

Section 1. Be it enacted by the General Assembly of the State of Indiana, that each and every railroad, plank road, macadamized road, and turnpike road companies heretofore incorporated, or hereafter to be incorporated within this State, shall have full power and authority from time to time to borrow money upon its own credit, at any rate of interest per annum not exceeding the legal rate of interest allowed by the law of the State where the loans may be negotiated or the money borrowed, to be agreed upon between the parties, for the sole purpose of constructing its road and furnishing materials therefor, with all necessary machinery and fixtures, necessary to carry on the operations of such company; and as evidence of such loans, or for the purchase of materials and necessary machinery on time, may issue its corporate bonds or promissory notes; and to secure the payment thereof with the interest which shall accrue, may mortgage its road, income, and other property, and may, by its president or other officer or agent, sell, dis-

pose of, or negotiate such bonds, notes, or the stock of such company, at such time and at such places, either within or without this State, and at such rates and for such prices as in the opinion of such company will best advance its interests.

Section 2. And if such bonds, notes, or stock are thus sold at a discount, such sale shall be as valid and binding in every respect as if sold at their par value; and every such company is hereby authorized to confer upon the holder of any bond or note sold or issued as aforesaid the right to convert the principal thereof at any time until paid into the stock of such company.

Section 3. All such contracts, bonds, notes, and mortgages made in pursuance of the foregoing provisions shall be as valid and binding upon the parties thereto as if the same had been originally embodied in the several acts incorporating such companies: Provided, however, that this act shall not be so construed as to repeal, change, or modify any similar provisions contained in any act incorporating any railroad company, or any act amendatory thereof, or to restrict the provisions of any act of incorporation of any railroad company, or any act amendatory thereof, which has enlarged rights, grants, or privileges.

Section 4. It is hereby declared that an emergency exists for the immediate taking effect of this act; therefore, be it enacted, that this act shall take effect and be in force from and after its passage; and that the same be published in the "Indiana Statesman," the "Indiana State Journal," and the "Indiana State Sentinel."

JOHN W. DAVIS,
Speaker of the house of representatives.
JAMES H. LANE,
President of the senate.

Approved February 5, 1852.

JOSEPH A. WRIGHT.

STATE OF INDIANA, *to wit:*

I, Charles H. Test, secretary of State for the State of Indiana, do hereby certify, that the foregoing act of the general assembly of the State of Indiana is a true, full, and complete copy of the act therein recited.

In testimony whereof I have hereunto set my hand and affixed the seal of the State of Indiana this fifth day of February, [L. S.] 1852.

CHARLES H. TEST,
Secretary of State.

SCHEDULE S.

An act to amend an act entitled "an act to authorize the sale of the Central railroad, and to incorporate the Michigan Central Railroad Company."

Section 1. Be it enacted by the senate and house of representatives

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of the State of Michigan, That it shall be lawful for the Michigan Central Railroad Company to aid and assist any incorporated railroad company or companies authorized and having power to build a railroad from the southern line of this State, near Lake Michigan, to the city of Chicago, in the State of Illinois, or over any part of said distance, in the construction, maintenance, and operation of any such railroad to connect the central railroad from its western terminus with said Chicago; and for such purpose may take and hold stock in any such incorporated railroad company or companies, and may enter into any contracts or agreements to make or to guarantee loans of money to any such company or companies, or to furnish to the same railroad iron, or other material or locomotive power, or to operate such railroad; and all such contracts or agreements, and all securities and obligations made, entered into, or taken by said Michigan Central Railroad Company in consideration of any such contract or agreement, shall be in all respects valid and effectual in law: Provided, that nothing in this act contained shall be construed to authorize the said company to carry on the business of banking or brokerage, or to take or hold stock in any incorporated banking company; and provided, also, that nothing in this act shall be so construed as to change the western route of said central railroad, as fixed by section five of the act to which this act is amendatory.

Section 2. This act shall take effect whenever the said company shall file their acceptance of the same in writing, signed by the president of said company under its corporate seal, in the office of the secretary of State: Provided such acceptance shall be so filed within six months from the passage of this act.

Approved April 3d, 1848.

[For plat see original.]

SCHEDULE M.

An act to change that part of the New Albany and Crawfordsville macadamized road which lies between Salem and New Albany to a railroad, to be constructed by a private company.

Section 1. Be it enacted by the general assembly of the State of Indiana, That any association of persons which may be formed under and by virtue of the provisions of an [act] entitled "an act to provide for the continuance of the construction of all or any part of the public works of this State by private companies, and for abolishing the board of internal improvements, and the offices of fund commissioner and chief engineer, approved January 28, 1842," be, and they are hereby authorized to enter upon, have, hold, and possess all and singular the rights of way, fixtures, water power and other appendages and materials heretofore provided, located, and designated for the purpose of

constructing that part of a macadamized road from Jeffersonville to Crawfordsville, which lies between Salem and New Albany, under and by virtue of an act to amend an act entitled "an act to provide for a general system of internal improvements, approved January 27th, 1836," approved January 25, 1838, and the railroad which, in and by said acts, was authorized to be continued from New Albany to Jeffersonville; and said company are hereby authorized to extend said road to White river, making Lawrenceport a point.

Section 2. And be it further enacted, That said company be, and it is hereby, authorized to change that part of said road which lies between Salem and New Albany to a railroad; and that in the construction and completion therefor said company shall be governed by the provisions of the act herein before named, approved January 28, 1842, and have and possess all the rights, privileges, and immunities granted by said act.

Sections 3 and 4 repealed.

Section 5. This act shall be in force and have effect from and after its passage.

SCHEDULE N.

An act for the benefit of the New Albany and Salem railroad company.

Passed senate February 11, 1848, the objections of the governor to the contrary notwithstanding.

Test:

Secretary of Senate.

Passed house of representatives February 11, 1848, the objections of the governor to the contrary notwithstanding.

M. S. WARD, *Clerk.*

Section 1. Be it enacted by the general assembly of the State of Indiana, That the State of Indiana hereby releases to the New Albany and Salem railroad company any and all right of redemption which the State may have under and by virtue of any act heretofore passed, or any thing done or to be done by said company.

Section 2. This relinquishment shall not take effect on any part of the route of said road upon which there shall not be put the superstructure and all preparation for running cars thereon by said company within five years from the passage of this act.

Section 3. The said company shall have the right and power to extend their work or road to any other point or points than those indicated by the location heretofore made by authority of the State: Provided, that said road shall first be constructed from the city of New Albany to the town of Salem, and said town of Salem shall be a point upon the continuous or main line of said road: And provide further, that no road shall be constructed by said company which shall diverge from the main line of said road between New Albany and Salem, if it

shall be found practicable to continue said road from Salem to Columbus, or such other point or points as said company shall deem best; and in making such other extensions or change of routes said company shall have and enjoy all the powers and rights conferred upon the State, and be subject to all the liabilities on her imposed by an act entitled "an act to provide a general system of internal improvements," approved January 27, 1836; and an act entitled "an act to provide for the continuance of the construction of all or any part of the public works of this State by private companies, and for abolishing the board of internal improvements and the office of fund commissioner and chief engineer." Approved January 28, 1842.

Section 4. That so much of any act or law now in force as render the stockholders of said company liable in their individual right for any of the liabilities of said company be, and the same is hereby, repealed as to all liabilities by said company to be contracted after the passage of this act.

Section 5. That section fourth of an act entitled "an act to change that part of the New Albany and Crawfordsville macadamized road, which lies between Salem and New Albany, to a railroad to be constructed by a private company," be, and the same is hereby, repealed.

Section 6. This act to take effect and be in force from and after its passage and publication in the Indiana State Journal and State Sentinel.

SCHEDULE O.

An act in relation to the New Albany and Salem railroad company.

Section 1. Be it enacted by the general assembly of the State of Indiana, That the New Albany and Salem railroad company be, and they are hereby, authorized to borrow money at a rate of interest not exceeding eight per cent. per annum, and issue bonds for the purpose of enabling said company to finish the construction of a railroad from New Albany to Salem, and for the purpose of enabling said company to construct a railroad to such other point or points as said company may deem expedient: Provided, however, nothing in this section contained shall be so construed as to release said railroad company from the restrictions contained in the third section of an act entitled "an act for the benefit of the New Albany and Salem railroad company," passed February 11, 1848.

Section 2. That nothing in an act entitled "an act for the benefit of the New Albany and Salem railroad company," which was passed by the senate and house of representatives on the 11th of February, 1848, shall be so construed as to prevent said railroad company from constructing a railroad commencing at a point on the main line of the road between New Albany and Salem, and extending from such point to the town of Charlestown, in the county of Clark, and in crossing the track or route of the Ohio and Indianapolis railroad company, a just

course shall be pursued, and as little damage done as possible; and said New Albany and Salem railroad company shall be responsible for whatever damage they may occasion; and on the line of road proposed to be constructed to Charlestown all claim or claims for damages, either for right of way or materials, shall be made within three years after the location of said road or the taking of said materials.

Section 3. The board of directors of the New Albany and Salem railroad company shall, in the assessment of damages in relation to all necessary rights of way and materials, possess the same powers and perform the same duties that were possessed and performed by the board of internal improvements, as provided in the 16th and 17th sections of an act entitled "an act to provide for a general system of internal improvements," approved 27th January, 1836; that no money borrowed by the Salem and New Albany railroad company shall be applied to the construction of the Charlestown branch of said road, without the consent of a majority of the directors living in Washington county.

[Section 4.] This act shall be in force from and after its passage.

Schedule P.

An act to amend the charter of the New Albany and Salem railroad company. (*Approved January* 12, 1850.)

Section 1. Be it enacted by the general assembly of the State of Indiana, That it shall be lawful for the New Albany and Salem railroad company to receive subscriptions of stock in lands at such rate as may be agreed upon between the parties, and that sections from 30 to 43 inclusive, of an act entitled "an act to provide for the continuance of the construction of all or any parts of the public works of this State by private companies, and for abolishing the board of internal improvements and the office of fund commissioner and chief engineer," approved January 28, 1842, be, and they are hereby repealed, so far as they operate to prevent said railroad company from receiving subscriptions of stock in real estate at prices and terms which may be agreed upon between the parties.

Section 2. That the New Albany and Salem railroad company is hereby authorized to hypothecate and mortgage, or pledge the whole or any portion of the road constructed or proposed to be constructed by it as security for moneys loaned or advanced to it, upon such terms and conditions as by the board of directors may be deemed just and equitable, not exceeding interest at the rate of eight per cent. per annum, and may proceed to locate and construct the same at such times and in such manner as shall be ordered by the board.

Section 3. All conveyances, leases, and transfers of real estate to and from said company shall be in its corporate name.

[Section 4.] This act to take effect and be in force from and after its passage.

SCHEDULE Q.

An act for the benefit of the New Albany and Salem railroad company.

Section 1. Be it enacted by the general assembly of the State of Indiana, That it shall be lawful for the New Albany and Salem railroad company to borrow money for the objects of the organization of said company, either within or without the State of Indiana, at such rate of interest, and upon such terms in all respects as may be agreed upon by the parties to such loans. And said company shall also have full power and authority to mortgage or pledge any part or all of the corporate property of said company as a security upon any such loan or loans.

Section 2. And be it further enacted, That said company shall have full power and authority to issue bonds or other evidences of debt for the purpose of raising money for the objects of such organization, and bearing such rate of interest as said company may deem advisable; and such other evidences of debt may be sold or otherwise disposed of by said company, in raising money or in procuring labor and materials in the prosecution of the objects of such organization, upon such terms and upon such rates as may be agreed upon by the parties; and if such sale or disposition of such obligations or other evidences of debt shall be at a discount, the same shall remain as valid and binding in every respect as if sold at par value.

Section 3. And be it further enacted, That all laws coming in conflict with the provisions of this act be, and the same are hereby, repealed.

Section 4. This act is hereby declared a public act, and to be in force from and after its passage.

SCHEDULE R.

Whereas the New Albany and Salem railroad company have the authority to extend their line of road from its present terminus to such point or points in the State of Indiana as may by them be deemed advisable; and whereas they deem it important, both for the public good and their own interest, to extend their said road to Michigan City, and thence westwardly to the State line of Illinois, in such direction as may be expedient to accommodate the business and travel between southern Indiana and the west and northwest, as well as the State of Michigan and the east, and have resolved so to locate and construct their said road; and whereas, for the purpose of more speedily completing the said road, they are desirous of procuring assistance by way of subscription to their stock as well as otherwise; and whereas the Michigan Central Railroad Company are willing to subscribe for five hundred thousand dollars of the stock of the said New Albany and Salem railroad company upon certain conditions, as well as to build the entire line of said road from Michigan City to the Illinois State line, provided it can have the use and control of the same until the cost of the same shall be re-

imbursed to it, as is hereafter provided; and whereas the early construction of said road from Michigan City to the Illinois line is of the greatest importance to secure the connexion between the New Albany and Salem railroad and the roads in Illinois, and the Michigan Central Railroad Company, as well as other roads that may hereafter be connected:

Now, therefore, this indenture, made and entered into by and between the New Albany and Salem Railroad Company of the first part, and the Michigan Central Railroad Company of the second part, this twenty-fourth day of April, eighteen hundred and fifty-one, witnesseth, that in consideration of the rights to be secured to the Michigan Central Railroad Company, as is herein provided and agreed upon, the said Michigan Central Railroad Company agrees to subscribe for and take five hundred thousand dollars of the capital stock of the New Albany and Salem Railroad Company, and to pay for the same in the manner following, that is to say: twenty-five thousand dollars on the first day of September next; twenty-five thousand dollars on the first day of March, eighteen hundred and fifty-two; twenty-five thousand dollars on the first day of September, in the same year; twenty-five thousand dollars on the first day of March, eighteen hundred and fifty-three; and fifty thousand dollars at the end of every six months thereafter, until the whole of said subscription of five hundred thousand dollars be fully paid; which said payments shall be made at the office of the Michigan Central Railroad Company, in the city of Boston or New York, upon the drafts of the president of the New Albany and Salem Railroad Company: Provided, however, and it is mutually understood and agreed, that the said sums shall not be called for at those periods, unless necessary in the construction of the main line of said road; and this is also further agreed, as one of the terms of said subscription, and one of the conditions of said payments, that no more than one hundred thousand dollars of said money shall be used in constructing said road south of Lafayette; the balance thereof, it being understood and agreed, shall only be called for and used in the construction of said road from Lafayette to the present terminus of the road constructed or owned by the Michigan Central Railroad Company at Michigan City. And it is further agreed by the said first party, that the Michigan Central Railroad Company shall have the right to vote upon the whole of the stock standing in its name from the date of its subscription; and that full paid stock shall be issued to said company as fast as it shall make payments of the instalments of said subscriptions in the manner above agreed upon.

And the New Albany and Salem Railroad Company further agree, that it will construct and finish its road from Lafayette to Michigan City, thereby forming a continuous line of railroad, in connexion with the Michigan Central railroad, from New Albany, in Indiana, to Detroit, in the State of Michigan, and Chicago, in the State of Illinois, within six months after the last payment shall fall due; and the said first party may be entitled to draw for the same in the manner above

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provided for on said subscription of the said Michigan Central Railroad Company to said stock.

And it is further mutually agreed, by and between the said parties, that the passenger depôt owned, or which may at any time hereafter be owned, by the Michigan Central Railroad Company at Michigan City, shall be used in common, and for the united and joint benefit of both said companies, but upon such terms and conditions as may hereafter be agreed upon; and also that, upon the completion of the said road from New Albany to Michigan City, there shall be some fair and equitable arrangements entered into between the said parties for the transportation of freight and passengers coming from one road and desirous of passing over the other, or any part thereof, and for the mutual interchange of the cars of said parties, so as to avoid the transshipment of freight and passengers at Michigan City, and for ticketing passengers through over both said roads, or parts thereof; and such arrangements shall be made with the Michigan Central Railroad Company, by the said first party, upon as favorable terms as shall be made with any road which shall compete with it for trade and business.

And it is further agreed, that that part of the road from Michigan City to the State line of Indiana, between that State and Illinois, shall be constructed by and under the superintendence of the Michigan Central Railroad Company, and its officers and agents, and that the same shall stand pledged, and shall be, and is hereby, bargained, conveyed, and mortgaged to the said Michigan Central Railroad Company, its successors and assigns forever, and all its appurtenances, depôts, shops, water stations, rights of way, tracks, side tracks, and fixtures and equipments of every kind and description, which may be hereafter constructed or built upon the same; and also the right to construct, complete, and perfect the same with single or double tracks; and also equip, operate, and control the same when constructed; and to that end the said party of the first part constitutes the said party of the second part, its successors and assigns, its agents, with full power to go on and construct the said road, and all its appurtenances suitable and proper, forthwith; and from time to time to add thereto, in such times and manner as may be most expedient, in the judgment of said company; and to that end, and to enable this to be most effectually accomplished, the said first party will do all such acts, and take all such actions, as shall become requisite and proper, the said Michigan Central Railroad Company paying all expenses and costs, and always saving the said first party harmless, and keeping them fully indemnified against all suits, actions, rights of actions, and claims which may exist by reason of any act done or omitted to be done by said Michigan Central Railroad Company, its officers or agents; and inasmuch as it is uncertain how much the said road from Michigan City to the Illinois line will cost, together with its depôts, tracks, &c., and as it will be inconvenient for the said first party to give attention to the same in its details and expenses, and as the parties are desirous of fixing some limit beyond which it shall not be required of the said first party

to go in case it shall redeem the said road, its fixtures and equipments, therefore it is mutually agreed that the said Michigan Central Railroad Company shall be entitled to a claim upon the said road, and its depôts, appurtenances and equipments, for all the moneys invested therein, either immediately or hereafter, to the extent of one million of dollars, which shall be taken and deemed to be a contract price for the construction of said road, liquidated and sealed, whether the same shall cost more or less; and as possibly the same may cost less, and as for a long time the same may not be a profitable road, except as it may contribute to benefit other roads in connexion therewith, it being understood that there is a parallel road now constructing around the head of Lake Michigan, and there existing competition upon the lake also, therefore the following terms are agreed upon as a compensation for interest upon the said sum of one million of dollars, viz.: The said Michigan Central Railroad Company shall operate and manage the said road from Michigan City to the Illinois line at its own expense and risk, and shall be entitled to receive the revenues therefor, and shall in addition thereto receive interest upon redemption of said road, but at the rate of only five per cent. upon the amount thereof; and it is mutually agreed that if, at the expiration of forty years from the date of these presents, the said New Albany and Salem Railroad Company shall pay to the said Michigan Central Railroad Company, its successors or assigns, the full sum of one million of dollars, with interest thereon at the rate aforesaid, then this instrument, as far as it operates as a mortgage or pledge of said road, shall cease, and become null and void; and in the mean time the said Michigan Central Railroad Company shall remain in full possession and control of the said road and its equipments, and shall have full right to keep the same in repair, operate and manage the same, and receive the revenues thereof, and shall proceed to construct the same at its pleasure, or as soon as it may be deemed proper; and it is further agreed, mutually, that should there be any failure to redeem the said road from the incumbrance of this mortgage and pledge, and the said Michigan Central Railroad Company shall find it necessary and proper to foreclose the same, then, and in case the same shall not produce the requisite amount of money to pay the said debt and interest, there shall exist no claim against the New Albany and Salem Railroad Company for any deficiency in the amount which may be realized to pay said debt, nor shall the remaining or other property of said company in any way be liable therefor, it being the understanding and agreement between the parties hereto that the Michigan Central Railroad Company shall rely upon said road, and its fixtures and equipments, between Michigan City and the Illinois line alone for the payment of said debt, interest, and costs; and it is also agreed the New Albany and Salem Railroad Company shall in no way, in the first instance, be liable for the construction of said track of road hereby mortgaged and pledged; that during the whole period of the existence of this mortgage it shall suffer no harm, or loss, or injury, by reason of any default, neglect, or act of the said

Michigan Central Railroad Company; and that the said last company shall pay and discharge all the costs of construction and repairs of said road, and all claims against it, and all liabilities which may exist or spring up by reason thereof. And the said New Albany and Salem Railroad Company agree that it will not do or suffer any act to be done, in their name, which shall in any way impair the right to use, enjoy, and control, by the Michigan Central Railroad Company, any road built or constructed by them between Michigan City and the Illinois line under this instrument, nor execute any mortgage or other lien thereupon; and it is further agreed, for the security of the New Albany and Salem Railroad Company, that in case the Michigan Central Railroad Company shall fail to pay any of the instalments of stock, so to be subscribed for by it as aforesaid, for the term of sixty days after the same shall be due and payable by the terms aforesaid, then the New Albany and Salem Railroad Company shall, at any time after the expiration of said number of days, have the right to take and hold the exclusive possession of the said line of road between Michigan City and the Illinois line, and suspend all right and all action of the Michigan Central Railroad Company, under this agreement, until the payment of the amount in arrears shall be fully made, together with five per cent. damages on the amount so in arrears, and further damage at the rate of twenty per cent. per annum upon the amount unpaid and over due; and if the Michigan Central Railroad Company continue to fail to make such payment of any sum in arrears, as aforesaid, for the further time of six months, then the New Albany and Salem Railroad Company shall, at any time after the expiration of said six months, have the power to declare all the rights of the said Michigan Central Railroad Company under this agreement to be wholly forfeited and at an end. It is also further agreed, by the said first party, that it will establish within one year, and will thereafter continue, in New York city, a transfer agency, for the transfer of its stock in that city by eastern holders thereof.

In witness whereof the said parties have hereunto affixed their corporate seal—the said New Albany and Salem Railroad Company by its president, and the Michigan Central Railroad Company by its president—the day and year first above written.

[SEAL.] J. M. TOWLES,
President M. C. R. R. Co.,

[SEAL.] JAMES BROOKS,
President N. A. & S. R. R. Co.

To the Michigan Central Railroad Company:

You will please to take notice that, upon the bill of complaint, with a copy of which you are herewith served, and in pursuance of the direction endorsed on said bill, a copy of which is also herewith served, a motion for an injunction, according to the prayer of said bill, will be made before the Hon. John McLean, one of the judges of the

Supreme Court of the United States, at his chambers, in the city of Washington, on Saturday, the eighth day of May next, at 10 o'clock, a. m., or as soon thereafter as counsel can be heard.

April 7, 1852. JNO. B. NILES,
Sol. for complainants, Laporte, Indiana.

Demurrer to bill of complaint.

In the circuit court of the United States, for the district of Michigan, in equity.

The demurrer of the Michigan Central Railroad Company to the bill of complaint of the Northern Indiana Railroad Company, and the Commissioners of the Western Division of the Buffalo and Mississippi Railroad Company.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained, to be true in such manner and form, as the same are thereby set forth and alleged, does demur to the said bill, and for cause of demurrer shows that the said complainant *has* not by their *their* said bill made such a case as entitles them in a court of equity to any discovery or relief against this defendant as to the matters contained in said bill or any of them; and also that the said New Albany and Salem Railroad Company are not made parties defendant in said bill of complaint. Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make further or other answer to the said bill; and it humbly prays to be hence dismissed with its reasonable costs in that behalf sustained.

JAMES F. JOY,
Solicitor and of counsel for said defendant.

At a session of the circuit court of the United States, for the seventh circuit and district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Tuesday the twenty-ninth of June, in the year of our Lord one thousand eight hundred and fifty-two; present, Hon. Ross Wilkins, district judge.

In the case between—

THE NORTHERN INDIANA RAILROAD COMPANY, and the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad, complainants,
vs.
THE MICIHGAN CENTRAL RAILROAD COMPANY, defendants.
} In chancery.

On demurrer of defendants to complainants' bill of complaint, the

parties, by their respective solicitors, to wit, John B. Niles, solicitor for the complainants, and James F. Joy, solicitor for the defendants, being present here in court, and the matter of said defendants' demurrer to said complainants' bill of complaint, and the said bill of complaint, being seen and considered, it is ordered, adjudged, and decreed, and the court doth accordingly order, adjudge, and decree, that said demurrer of defendants to the complainantss' bill of complaint in this case be, and the same is now, by the court here sustained.

And it is further ordered, adjudged, and decreed, that said complainants' bill of complaint in this case be, and the same is now, by the court here, dismissed; and that complainants pay to defendants their costs to be taxed.

Circuit court of the United States, for the seventh circuit, district of Michigan, June term, 1852.

THE NORTHERN INDIANA RAILROAD Company, and the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY.
} In chancery.

To the honorable Ross Wilkins, one of the judges of said court.

Said complainants respectfully represent, that they are desirous to take an appeal from the decree of said circuit court in the above cause, dismissing said bill, to the Supreme Court of the United States; and they pray that your honor will name the sureties, and specify the penalty in a bond, to be given on such appeal.

JNO. B. NILES,
Sol'r for complainants.

District of Michigan.

UNITED STATES OF AMERICA,
Seventh circuit.

It is ordered that the above prayer for an appeal be allowed, and that the appellants execute and file, in the clerk's office of the district of Michigan, an appeal bond in said cause, in the penalty of one thousand dollars, with Elisha C. Litchfield, the obligor and surety therein, who is approved of for that purpose.

Given under my hand, at Detroit, this 29th day of June, A. D. 1852.

ROSS WILKINS,
Judge of the district court for the U. S., for the district of Michigan.

Know all men bythese presents, that I, Elisha C. Litchfield, of De-

troit, in the State of Michigan, am held and firmly bound unto the Michigan Central Railroad Company, of the State of Michigan, in the sum of one thousand dollars, to be paid to said company and their assigns. For which payment, well and truly to be made, I bind myself, my executors, &c., firmly by these presents. Sealed with my seal and dated this 29th day of June, A. D. 1852.

The condition of the above bond is such, that whereas the Northern Indiana Railroad Company, and the Board of Commissioners for the Western Divison of the Buffalo and Mississippi railroad, have taken an appeal from the judgment and decree of the circuit court of the United States, for the seventh circuit, district of Michigan, to the Supreme Court of the United States, in a case wherein said last named parties are complainants, and said Michigan Central Railroad Company is defendant. Now, should said appellants prosecute said appeal with effect, and pay all damages and costs which may be adjudged against them, then this obligation to be void, otherwise in full force.

ELISHA C. LITCHFIELD.

In presence of—
GEORGE G. BALL.

Circuit court of the United States, for the 7th circuit and district of Michigan.

DISTRICT OF MICHIGAN, *ss.*

I, John Winder, clerk of said court, do hereby certify the above and foregoing to be a true transcript of the original record in the case, wherein the Northern Indiana Railroad Company, and the Board of Commissioners for the Western Division of the Buffalo and Mississippi Railroad, are complainants, and the Michigan Central Railroad Company are defendants; the said transcript having been carefully compared by me with such original, and is a copy of the whole of said original record.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Detroit, in said district, this ninth day of July, in the year of our Lord one thousand eight hundred and fifty-two, and of our independence the seventy-seventh.

[SEAL.]

JNO. WINDER, *Clerk.*